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REPORT
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LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT AMENDMENTS OF 1982

JULY 19 (legislative day, JULY 12), 1982.—Ordered to be printed

Mr. HATCH, from the Committee on Labor and Human Resources, submitted the following

REPORT

[To accompany S. 1182]

The Committee on Labor and Human Resources, to which was referred the bill (S. 1182) to amend the Longshoremen's and Harbor Workers' Compensation Act in order to improve the administration of the Act, to reduce incentives for fraud and abuse, to assure immediate compensation benefits and competent medical treatment for injured employees, and for other purposes, having considered the same, reports favorably thereon, with an amendment and an amendment to the title, and recommends that the bill as amended do pass.

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I. COMMITTEE AMENDMENT AS REPORTED

The Committee amendment provides:

That (a) this Act may be cited as the "Longshoremen's and Harbor Workers' Compensation Act Amendments of 1982".

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(b) Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Longshoremen's and Harbor Workers' Compensation Act.

DEFINITIONS

SEC. 2. (a) Section 2(3) is amended to read as follows:

"(3) The term 'employee' means any person directly engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker, but such term does not include—

"(A) any ship repairman, shipbuilder, or shipbreaker engaged by employers described in section 2(4)(B)(iv);

"(B) employees exclusively performing office clerical, secretarial, security, or data processing work;

"(C) club, camp, restaurant, museum, retail outlet, and marina personnel;

"(D) personnel of suppliers, transporters, or vendors temporarily doing business on the premises of employers described in section 2(4)(A);

"(E) aquaculture workers;

"(F) any person engaged in operating an independently or cooperatively owned grain elevator and who is not engaged in the loading or unloading of a vessel;

"(G) any person employed to build or repair any recreational vessel under 65 feet in length;

"(H) a master or member of a crew of any vessel; or

"(I) any person engaged by a master to load or unload or repair any small vessel under 18 tons net;

if employees described in clauses (A) through (G) are subject to coverage under a State workers' compensation law.".

(b) Section 2(4) is amended to read as follows:

"(4)(A) The term 'employer' means an employer any of whose employees are directly employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, building, or breaking a vessel).

"(B) The term employer does not include—

"(i) clubs, camps, restaurants, museums, retail outlets, or marinas;

"(ii) aquaculture farms;

"(iii) employers or operations of employers who otherwise would be described by subparagraph (A) of this paragraph—

"(I) solely and exclusively because they are in the business of building, repairing, or dismantling—

"(aa) commercial barges under 900 light displacement tons but no other vessel which is 900

lightship displacement tons used or intended for use on the inland waters of the continental United States as defined in section 311(a)(16) of the Federal Water Pollution Control Act (33 U.S.C. 1321(a)(16);

"(bb) commercial tugboats, towboats, crew boats, supply boats, or fishing vessels under 1600 tons but no other vessel which is 1600 tons gross or more; or

"(cc) any recreational vessel under 65 feet in length but no other vessel which is 65 feet in length or more, while upon any pier, wharf, building way, marine railway, graving dock, or any other facility or area over land customarily used in ship repairing, shipbuilding, or shipbreaking; and

"(II) if the operations of employers described in subdivision (I) do not receive Federal maritime subsidies.".

(c) Section 2(13) is amended to read as follows:

"(13) The term 'wages' means the money rate at which the service rendered by an employee is compensated by an employer under the contract of hiring in force at the time of the injury, including the resonable value of any advantage which is received from the employer and included for purposes of any withholding of tax under subtitle C of the Internal Revenue Code of 1954 (relating to employment taxes). The term wages does not include fringe benefits, including but not limited to employer payments for or contributions to a retirement, pension, health and welfare, life insurance, training, social security or other employee or dependent benefit fund or trust for the employee's or dependent's benefit, or any other employee's dependent entitlement.".

COVERAGE

SEC. 3. Section 3(a) is amended to read as follows:

"(a) Compensation shall be payable under this Act in respect of disabiilty or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any pier, wharf, drydock, terminal, building way, marine railway, or other adjoining area customarily used by the employer in loading, unloading, repairing, or building a vessel). No compensation shall be payable in respect of the disability or death of——

"(1) any employee described in section 2(3)(A) through (I) of this Act; or

"(2) an officer or employee of the United States or any agency thereof or any State or foreign government, or of any political subdivision thereof.".

(b) Section 3 is amended by adding the following new subsection:

"(c) Notwithstanding any other provision of law, any amounts paid by any employer for the same injury, disability,

or death for which benefits are claimed under this Act pursuant to any other workers' compensation law or section 20 of the Act of March 4, 1915 (38 Stat. 1185, chapter 153; 46 U.S.C. 688) (relating to recovery for injury to or death of seamen) shall be credited against any liability imposed by this Act.".

EXCLUSIVENESS OF REMEDY AND THIRD PARTY LIABILITY

SEC. 4. (a) Section 5(a) is amended by inserting after the word "liability" the second time it appears the following: "including any liability imposed by or arising out of any other workers' compensation law or section 20 of the Act of March 4, 1915 (38 Stat. 1185, chapter 153; 46 U.S.C. 688)".

(b)(1) The third sentence of section 5(b) is amended to read as follows: "If such person was employed to provide ship building, repairing, or breaking services and such person's employer was the owner, owner pro hac vice, agent, operator, or charterer of the vessel, no such action shall be permitted, in whole or in part or directly or indirectly, against the injured person's employer (in any capacity, including as the vessel's owner, owner pro hac vice, agent, operator, or charterer) or against the employees of the employer.".

(2) Section 2(21) is amended by striking out "The" and inserting in lieu thereof "Unless the context requires otherwise, the".

(c) Section 5 is amended by adding at the end thereof the following new subsection:

"(c) In the event that the negligence of a third party causes injury to a person entitled to receive benefits under this chapter by virtue of section 4 of the Outer Continental Shelf Lands Act (43 U.S.C. 1333), then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such third party in accordance with the provisions of section 33 of this Act. Nothing contained in this chapter, or in any otherwise applicable State law, shall preclude the enforcement according to its terms of any written agreement under which the employer has agreed to indemnify such third party in whole or in part with respect to such action.".

COMPENSATION

SEC. 5. (a) Section 6(b)(1) is amended to read as follows:

"(b)(1) Compensation for disability or death shall not exceed an amount equal to 200 per centum of the applicable national average weekly wage, as determined by the Secretary under section (b)(3).".

(1) by striking out subsection (c) and redesignating subsection (d) (and any references thereto) as subsection (c); and

(2) by striking out "under this subsection" in subsection (c) (as redesignated) and inserting in lieu thereof "under subsection (b)(3)".

MEDICAL SERVICES AND SUPPLIES

SEC. 6. (a) The penultimate sentence of section 7(b) is amended by inserting before the period the following: "or where the charges exceed those prevailing within the community for the same or similar services".

(b) Section 7(c) is amended to read as follows:

"(c)(1)(A) The Secretary shall annually prepare a list of physicians in each compensation district who are not authorized to render medical care under this Act. The names of physicians contained on the list required under this subparagraph shall be made available to employees and employers in each compensation district through posting or in such form as the Secretary may prescribe.

"(B) The Secretary may refuse to authorize any physician who, in accordance with the provisions of subsection (j)(1) of this section, and shall refuse to authorize any physician who, in accordance with the provisions of subsection (j)(2) of this section, has been found ineligible to receive payments under this Act. A physician not authorized under this Act shall not be entitled to reimbursement for any service, appliance, or supply or to recover any amount with respect to any such service, appliance, or supply from any employee.

"(2) Whenever the employer or carrier acquires knowledge of the employee's injury, through written notice or otherwise as prescribed by the Act, the employer or carrier shall forthwith authorize medical treatment and care from a physician selected by an employee pursuant to subsection (b). An employee may not select a physician who is on the list required by paragraph (1) of this subsection. An employee may not change physicians after his initial choice unless the employer, carrier, or deputy commissioner has given prior consent for such change. Such consent shall be given in cases where an employee's initial choice was not of a specialist whose services are necessary for and appropriate to the proper care and treatment of the compensable injury or disease. In all other cases, consent may be given upon a showing of good cause for change.".

(c) Section 7(d) is amended to read as follows:

"(d) An employee shall not be entitled to recover any amount expended by him for medical or other treatment or services unless he shall have complied with subsections (b) and (c) and the applicable regulations or unless the employer shall have refused or neglected to furnish such services, or unless the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide or authorize same; nor shall any claim for medical or surgical treatment be valid and enforceable against such employer, unless within 21 days following the first treatment the physician giving such treatment furnishes to the employer and the deputy commissioner a report of such injury or

treatment, on a form prescribed by the Secretary. The Secretary may excuse the failure to furnish such report within the 21-day period whenever he finds it to be in the interest of justice to do so. The Secretary may, upon application by a party in interest, make an award for the reasonable value of such medical or surgical treatment so obtained by the employee. If at any time the employee unreasonably refuses to submit to medical or surgical treatment, or to an examination by a physician selected by the employer, the Secretary or administrative law judge may, by order, suspend the payment of further compensation during such time as such refusal continues, and no compensation shall be paid at any time during the period of such suspension, unless the circumstances justified the refusal.".

(d) Section 7 is amended by adding at the end thereof the following new subsection:

"(j)(1) Notwithstanding any other provisions of this Act, no liability shall arise under this Act for a service, appliance, or supply furnished by an individual or entity where the Secretary determines under this subsection that a provider—

"(A) has knowingly and willfully made, or caused to be made, a false statement or representation of a material fact in connection with any services provided under this Act;

"(B) has submitted, or caused to be submitted, a bill or request for payment under this Act containing a charge which the Secretary finds to be substantially in excess of the charge for the service, appliance, or supply prevailing within the community unless the Secretary finds there is good cause for the bill or request containing the charge; or

"(C) has furnished a service, appliance, or supply which is determined by the Secretary to be substantially in excess of the need of the recipient thereof or to be of a quality which fails to meet professionally recognized standards.

"(2) Liability shall not arise for a service, appliance, or supply furnished by a provider—

"(A) indicted or convicted under a criminal statute (without regard to pending appeal thereof) for fraudulent activities or (as determined by regulation of the Secretary) related activities, in connection with a program under which payments are made to providers for similar services, appliances, or supplies; or

"(B) otherwise excluded from participation in a program under which payments are made to providers for similar services, appliances, or supplies.

"(3) A provider of a service, appliance, or supply shall provide to the Secretary such information and certification as the Secretary may require to assure that this subsection is enforced.

"(4)(A) A determination made by the Secretary under paragraphs (1) and (2) shall be effective—

"(i) in connection with any request for payment by a provider, upon notice consistent with paragraph (5); or

"(ii) in connection with a request for payment by anyone claiming benefits undert his Act, only with respect to payment of expenses incurred after receipt of notice of the determination by such person.

"(B) A determination shall remain in effect until the Secretary finds and gives notice to the public that the basis for the determination will not reoccur.

"(5) The Secretary may make rules and regulations and establish procedures which are necessary or appropriate to carry out this subsection, including notice and opportunity for a hearing to the provider of a service, appliance, or supply, subject to a determination made by the Secretary under paragraphs (1) and (2) of this subsection.".

COMPENSATION FOR DISABILITY

SEC. 7. (a) Section 8(a) is amended to read as follows:

"(a) Permanent total disability: In the case of total disability determined to be permanent, 66⅔ per centum of the average weekly wages of the employee shall be paid to the employee during the continuance of the disability, except that compensation paid to the injured employee shall be subject to section 6(b)(1) and shall be reduced by 50 per centum of the amount of old-age insurance benefits to which the employee is entitled under title II of the Social Security Act. Loss of both hands, both arms, both feet, both legs, both eyes, or any combination of two such body parts, shall constitute permanent total disability in the absence of conclusive proof to the contrary. In all other cases, permanent total disability shall be determined in accordance with the facts.".

"(b) Section 8(c)(13) is amended to read as follows:

"(13) Loss of hearing:

"(A) Compensation for loss of hearing in one ear, fifty-two weeks.

"(B) Compensation for loss of hearing in both ears, two-hundred weeks.

"(C) An employer shall be liable to the employee only for the loss of hearing attributable to employment by the employer.

"(D) An audiogram shall be conclusive evidence of the amount of hearing loss sustained as of the date thereof, unless contrary audiograms made at that time are produced.

"(E) Within 90 days of the date of enactment of this Act, the Secretary shall promulgate regulations to define the term 'loss of hearing' in accordance with the American Medical Association Guides for the Evaluation of Permanent Impairment.".

(c) Section 8(c)(20) is amended by striking out "$3,500" and inserting in lieu thereof "$7,500".

(d) Section 8(c)(21) is amended to read as follows:

"(21) Other cases: In all other cases in this class of disability, the compensation shall be 66⅔ per centum of the difference between the average weekly wages of the employee and the employee's wage-earning capacity thereafter in the same employment or otherwise payable during the continuance of the partial disability.".

(e) Section 8(d) is amended by striking out paragraph (3) and redesignating paragraph (4) (and any reference thereto) as paragraph (3).

(f) Section 8(f) is amended—

(1) by striking out "one hundred and four weeks" wherever it appears and inserting in lieu thereof "two hundred and eight weeks"; and

(2) by adding at the end thereof the following new paragraph:

"(3) Any request for second injury fund apportionment in accordance with section 8(f) must be presented to the deputy commissioner and the conservator prior to consideration by an administrative law judge.".

(g) Subsections (g) through (i) of section 8 are amended to read as follows:

"(g) Compensation for employees undergoing vocational rehabilitation:

"(1) An employee who as a result of an injury is undergoing vocational rehabilitation for remunerative employment under the supervision of the deputy commissioner, pursuant to section 39(c), or with the approval of the employer, shall receive continued temporary total or partial compensation during the period of rehabilitation.

"(2) An award for permanent disability may not be entered before the deputy commissioner determines, or the employer and employee agree, that vocational rehabilitation is unnecessary or until after vocational rehabilitation has been completed.

"(3) If an employee unreasonably refuses to undergo vocational rehabilitation or to participate in a reasonable plan offered and financed by the employer to return the injured employee to work, the employee shall not be eligible to receive compensation payments that would otherwise be payable for the period of the refusal.

"(h) The wage-earning capacity of an injured employee in cases of disability shall be determined by his actual earnings if such actual earnings fairly and reasonably represent his wage-earning capacity: *Provided, however*, That if the employee has no actual earnings or his actual earnings do not fairly and reasonably represent his wage-earning capacity, the deputy commissioner may, in the interest of justice, fix such wage-earning capacity as shall be reasonable, having due regard to the nature of his injury, the degree of physical impairment, his usual employment, and any other factors

or circumstances in the case which may affect his capacity to earn wages in his disabled condition.

"(i)(1) Whenever the parties to any claim for compensation, including survivors benefits, under this Act agree to a settlement, the deputy commissioner or administrative law judge shall approve the settlement within 30 days unless it is found to be inadequate or procured by duress. No liability of any employer, carrier, or both for disability or death benefits shall be discharged unless the application for settlement is approved by the deputy commissioner or administrative law judge. If the parties to the settlement are represented by counsel, then agreements shall be deemed approved unless specifically disapproved within 30 days after submission for approval.

"(2) If the deputy commissioner disapproves an application for settlement under paragraph (1), the deputy commissioner shall issue a written statement within 30 days containing the reasons for disapproval. Any party to the settlement may request a hearing before an administrative law judge in the manner prescribed by this Act. Following such hearing, an order shall be issued approving, rejecting, or modifying the deputy commissioner's decision. If the parties to the settlement are represented by counsel, then agreements shall be deemed approved unless specifically disapproved within 30 days after submission for approval.

"(3) A settlement approved under this section shall discharge the liabiilty of the employer, carrier, or both. Such settlement may include future medical benefits if the parties so agree and the deputy commissioner approves. Settlements may be agreed upon at any stage of the proceeding including after entry of a final compensation order.".

(h) Section 8 is amended by adding at the end thereof the following new subsection:

"(j) (1) The employer may inform a disabled employee of his obligation to report to the employer not less than semiannually any earnings from employment or self-employment, on such forms as the Secretary shall specify in regulations.

"(2) An employee who—

"(A) fails to report the employee's earnings under paragraph (1) when requested, or

"(B) Knowingly and willfully omits or understates any part of such earnings,

and who is determined by the deputy commissioner to have violated clause (A) or (B) of this paragraph, forfeits his right to compensation with respect to any period during which the employee was required to file such report.

"(3) Compensation forfeited under this subsection, if already paid, shall be recovered by a deduction from the compensation payable to the employee in any amount and on such schedule as determined by the deputy commissioner.".

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COMPENSATION FOR DEATH

SEC. 8. (a) The matter preceding the colon in section 9 is amended to read as follows:

"SEC. 9. If the injury causes death, the compensation therefor shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following".

(b) Section 9(a) is amended by striking out "$1,000" and inserting in lieu thereof "$3,000".

(c) Section 9(e) is amended to read as follows:

"(e) In computing death benefits, the average weekly wages of the deceased shall not be less than the national average weekly wage as prescribed in section 6(b), except that the total weekly benefits shall not exceed the lesser of the average weekly wages of the deceased or the benefit which the deceased employee would have been eligible to receive under section 6(b)(1).".

DETERMINATION OF PAY

SEC. 9. Section 10(f) is amended to read as follows:

"(f) Effective October 1 of each year following the date of enactment of this Act, the compensation or death benefits payable for permanent total disability or death arising out of injuries subject to this Act shall be increased—

"(1) by a percentage equal to the percentage (if any) by which the applicable national weekly wage for the period beginning on such October 1, as determined under section 6(b), exceeds the applicable national average weekly wage, as so determined, for the period beginning with the preceding October 1; or

"(2) by 5 per centum, whichever percentage is less.".

NOTICE OF INJURY OR DEATH

SEC. 10. (a) Section 12(a) is amended to read as follows:

"(a) Notice of an injury or death in respect of which compensation is payable under this Act shall be given within 30 days after the date of such injury or death, or 30 days after the employee or beneficiary is aware or by reason of medical advice should have been aware of a relationship between the injury or death and the employment. Such notice shall be given (1) to the deputy commissioner in the compensation district in which the injury or death occurred, and (2) to the employer. Each employer shall designate those agents or other responsible officials, including first line supervisors, to receive such notice, in accordance with regulations prescribed by the Secretary and shall notify his employees of such designation in a manner prescribed by the Secretary in regulations.".

(b) Section 12(d) is amended by deleting "(or his agent in charge of the business in the place where the injury occurred)" and inserting in lieu thereof the following: "(or

his agent or agents or other responsible official or officials designated by the employer as designated under subsection (a))".

PAYMENT OF COMPENSATION

SEC. 11. (a) Section 14(b) is amended by striking out "employer" and inserting in lieu thereof "employer's agent or agents as designated under section 12(a)".

(b) Section 14 is amended by striking out subsection (j) and by redesignating subsections (k) and (l) (and any references thereo) as subsections (j) and (k), respectively.

PRESUMPTIONS

SEC. 12. Section 20 is amended as follows:

(1) by inserting before the period in subsection (b) a comma and the following: "except when the agent or agents or other responsible official or officials designated by the employer in section 12 (a) and (d) have not received actual or constructive notice", and

(2) by adding at the end of the section the following new sentence: "The mere existence of a physical impairment is insufficient to establish a claim under this Act.".

REVIEW OF COMPENSATION ORDER

SEC. 13. Section 21 is amended by adding the following new paragraph at the end of subsection (b):

"(5) Notwithstanding paragraphs (1) through (4), upon application of the Chairman of the Board, the Secretary may designate up to four Department of Labor administrative law judges to temporarily serve on the Board. Any party aggrieved by the decisions of a panel or division of the Benefits Review Board may, within 30 days after the decision, petition the entire Board (permanent plus temporary members) for a rehearing en banc. Upon affirmative vote of the majority of the Board sitting en banc, the petition shall be granted. If a petition for a rehearing en banc is granted, and the vote of the Board sitting en banc results in a tie, the decison of the panel or division of the Board shall be affirmed. The Benefits Review Board shall amend its Rules of Practice to conform with this paragraph. Temporary members shall be compensated at the same rate of compensation as they were receiving prior to such temporary designation. Except when sitting en banc, and for the purpose of carrying out its adjudicative functions under this Act, two members of the Board shall constitute a quorum of a panel or division and official adjudicative action can be taken only on the affirmative vote of at least two members of a division or panel.".

MODIFICATIONS OF AWARDS

SEC. 14. Section 22 is amended by striking all after "the deputy commissioner may" through "rejection of a claim".

FEES FOR SERVICES

SEC. 15. (a) Section 28(a) is amended to read as follows:

"(a) A claim for legal services or for any other services provided to or on account of a person with respect to a claim for or award of compensation under this Act is not valid unless approved by the deputy commissioner, an administrative law judge, the Board, or a court which is reviewing an order of an administrative law judge.".

(b) Section 28(e) is amended to read as follows:

"(e) A person who receives a fee, gratuity, or other consideration on account of services rendered as a representative of a claimant, unless the consideration is approved by the deputy commissioner, administrative law judge, Board, or court, or who makes it a business to solicit employment for a lawyer, or for himself, with respect to a claim or award for compensation under this Act, shall, upon conviction thereof, for each offense be punished by a fine of not more than $1,000 or be imprisoned for not more than one year, or both.".

REPORTS

SEC. 16. (a) Section 30(a) is amended—

(1) by inserting after the word "injury" a comma and the following: "which would cause loss of one or more shifts of work", and

(2) by adding at the end thereof the following new sentence: "Notwithstanding the requirements of this section, each employer shall keep a record of each and every injury regardless of whether such injury results in the loss of one or more shifts of work.".

(b) Section 30(e) is amended to read as follows:

"(e) Any employer, insurance carrier, or self-insured employer who willfully fails or refuses to send any report required by this section shall be subject to a civil penalty not to exceed $25,000 for each such failure or refusal.".

PENALTY FOR MISREPRESENTATION—PROSECUTION OF CLAIMS

SEC. 17. Section 31 is amended to read as follows:

"PENALTIES FOR MISREPRESENTATION—PROSECUTION OF CLAIMS

"SEC. 31. (a) (1) A person who willfully makes a false statement or representation for the purpose of obtaining a benefit or payment under this Act shall be guilty of a felony, and on conviction thereof shall be punished by a fine not to exceed $25,000, by imprisonment not to exceed three years, or both.

"(2) The United States attorney for the district in which the injury is alleged to have occurred shall make every reasonable effort to promptly investigate each complaint made under this subsection.

"(b)(1) A person may not prosecute or defend a claim other than his own under this Act other than a claimant, an attorney, a representative licensed by the Secretary, or an employee designated by an employer or carrier.

"(2) A person may not prosecute or defend a claim other than his own under this Act if the person—

"(A) is convicted of or pleads guilty to a crime in a State or Federal court;

"(B) gives false or substantially inaccurate information in an application for a license to prosecute or defend a claim under this Act;

"(C) conceals or attempts to conceal material facts with respect to a claim under this Act;

"(D) solicits or procures false testimony with respect to a claim under this Act; or

"(E) misappropriates funds or documents entrusted to the person with respect to a claim under this Act.

"(3) The Secretary shall issue such rules and regulations as are necessary to carry out this subsectiton.

"(c) A person including, but not limited to, an employer, his duly authorized agent, or an employee of an insurance carrier who willfully makes a false statement or representation for the purpose of denying or terminating benefits to an injured employee, or his dependents pursuant to section 9 if the injury results in death, shall be punished by a fine not to exceed $25,000, by imprisonment not to exceed three years, or by both.".

SECURITY FOR COMPENSATION

SEC. 18. Section 32(a)(2) is amended by inserting "based on the employer's financial condition, the employer's previous record of payments, and other relevant factors," after "in an amount determined by the Secretary,".

COMPENSATION FOR INJURIES WHERE THIRD PERSONS ARE LIABLE

SEC. 19. (a) Section 33(b) is amended to read as follows:

"(b) Acceptance of such compensation under an award in a compensation order filed by the deputy commissioner, an administrative law judge, or Board shall operate as an assignment to the employer of all rights of the person entitled to compensation to recover damages against such third person unless such person shall commence an action against such third person within six months after such awards. For the purpose of this subsection, the term 'award' with respect to a compensation order means a formal order issued by the deputy commissioner, an administrative law judge, or Board; if the employer fails to commence an actio nagainst such third person within a reasonable time after the cause of action is assigned under this section, the right to bring such action shall revert to the person entitled to compensation.".

(b) Section 33(f) is amended to read as follows:

"(f)(1) If a person entitled to compensation under the Act institutes proceedings within the period described in subsection (b), the employer shall be required to pay, as compensation under this Act, a sum equal to the excess of the amount which the deputy commissioner, an administrative law judge, or Board determines is payable on account of the injury or death above the amount recovered in the proceedings against a third person.

"(2) Any amount recovered by the person entitled to compensation on account of the proceedings by judgment or settlement, whether or not the settlement is approved by the employer in accordance with subsection (g), shall be distributed as follows:

"(A) The person entitled to compensation shall pay to the employer an amount equal to the sum of—

"(i) the cost of all benefits furnished to the person by the employer under section 7; and

(ii) all other amounts payable as compensation or benefits under this Act.

"(B) The person entitled to compensation or the person's representative shall retain the amount remaining after the payment required by subparagraph (A).".

(c) Section 33(g) is amended to read as follows:

"(g)(1) If the person entitled to compensation (or the person's representative) enters into a settlement with a third person referred to in subsection (a) for an amount less than the compensation to which the person (or the person's representative) would be entitled under this Act, the employer shall be liable for compensation as determined under subsection (f) only if written approval of the settlement is obtained from the employer and the employer's carrier, before the settlement is executed, and by the person entitled to compensation (or the person's representative). The approval shall be made on a form provided by the Secretary and shall be filed in the office of the deputy commissioner within 30 days after the settlement is entered into.

"(2) If no written approval of the settlement is obtained and filed as required by paragraph (1), or if the employee fails to notify the employer of any settlement obtained from or judgment rendered against a third person, all rights to compensation and medical benefits under this Act shall be terminated, regardless of whether the employer or the employer's insurer has made payments or acknowledged entitlement to benefits under this Act.

"(3) Payments by the special fund established under section 44 shall be a lien upon the proceeds of any settlement obtained from or judgment rendered against a third person referred to under subsection (a). Notwithstanding any other provision of law, such lien shall be enforceable against the employee, regardless of whether the Conservator on behalf of the special fund has agreed to or has received actual notice of the settlement or judgment.".

ANNUAL REPORT

SEC. 20. The Act is amended by inserting the following new section after section 42:

"ANNUAL REPORT

"SEC. 43. The Secretary shall make to Congress at the beginning of each regular session a report of the administration of this Act for the preceding fiscal year, including a detailed statement of receipts of and expenditures from the funds established in sections 44 and 45, together with such recommendations as the Secretary deems advisable.".

SPECIAL FUND CONSERVATION COMMITTEE—FUND CONSERVATOR

SEC. 21. Section 45 is amended to read as follows:

"SPECIAL FUND CONSERVATION COMMITTEE—FUND CONSERVATOR

"SEC. 45. (a)(1) There is established the Special Fund Conservation Committee (hereinafter in this section referred to as the 'Conservation Committee'). The Conservation Committee shall be responsible for protecting the financial integrity of the special fund established under section 44 (hereinafter in this section referred to as the 'special fund') by inserting that all distributions from the special fund are made in accordance with this Act.

"(2)(A) The Conservation Committee shall be composed of 5 members appointed by the Secretary, who shall be representatives of carriers authorized under section 32, including self-insurers and representatives of employers.

"(B) The terms of office of the members of the Conservation Committee shall be three years, except that of the members first appointed, one member shall be appointed for a term of one year, two members shall be appointed for a term of two years, and two members shall be appointed for a term of three years, as determined by the Secretary at the time of appointment.

"(C) A vacancy on the Committee shall be filled in the manner in which the original appointment was made. A member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of the term. A member may serve after the expiration of the member's term until the member's successor has taken office.

"(D) Members of the Conservation Committee shall serve without pay and may not be reimbursed for any travel or transportation expenses.

"(E) The Chairman shall be elected by the members of the Conservation Committee.

"(F) The Conservation Committee shall meet at the call of the Chairman or a majority of its members.

"(C) Upon request of the Conservation Committee, the Secretary shall provide such administrative services as the Committee shall require.

"(3)(A) The Conservation Committee may secure, directly from the Secretary of Labor, the Secretary of the Treasury, the Board, and a deputy commissioner, information necessary to enable it to carry out this section, including copies of all official records and reports. Upon request of the Chairman of the Conservation Committee, the appropriate Secretary, the Chairman of the Board, or the deputy commissioner shall furnish the information to the Committee.

"(B) The Conservation Committee may provide (by contract) for the auditing of the account of the special fund. The Conservation Committee may secure directly from the Comptroller General of the United States information derived from an audit conducted pursuant to section 44(g). Upon request of the Chairman of the Conservation Committee, the Comptroller General shall furnish the information to the Conservation Committee.

"(4) The Conservation Committee may establish such policies and procedures as may be necessary to carry out this section.

"(5) The Conservation Committee shall transmit to the Secretary of Labor, the Secretary of the Treasury, and to each House of Congress a report, not later than one year after the date of enactment of this Act, and each year thereafter. The report shall contain a detailed statement of the findings and conclusions of the Conservation Committee with regard to the financial integrity of the special fund, together with its recommendations for such legislative and administrative actions as it considers appropriate.

"(b)(1)(A) To carry out its responsibilities under this section, the Conservation Committee shall appoint a Fund Conservator (hereinafter in this section referred to as the 'Conservator').

"(B) The Conservation Committee may authorize the Conservator to take any action which the Conservation Committee is authorized to take under this section.

"(2)(A) The Secretary shall cause notice to be given to the Conservator whenever a payment from the special fund is ordered by the Secretary or whenever an administrative or judicial proceeding in which a party to the proceeding seeks to establish a liability of the special fund is scheduled to convene. A proceeding on an application for apportionment under section 8(f) of this Act may not be convened less than 30 days after notice of the proceeding has been given to the Conservator, unless the Conservator waives the limitation in writing to the Secretary.

"(B) Except as provided in subparagraph (C), the Conservator shall be a party in an administrative or judicial proceeding in which a party to the proceeding seeks to establish a liability of the special fund. The Conservator shall have the same rights in the proceeding as any other party, includ-

ing the right to participate in a settlement of a claim brought against the fund.

"(C) The Conservator may withdraw as a party from a proceeding described in subparagraph (B), after giving written notice to the Secretary and the officer or judge presiding over the proceeding, if the Conservator determines that there is a substantial likelihood that the liability of the fund will be established in the proceeding.

"(D) The Conservator may participate as a party in a case where the liability of the special fund is already established and a proceeding is convened to establish the amount of the liability, including a proceeding to review a compensation award under section 22.

"(E) The functions and responsibilities of the Conservator established under subparagraphs (B) through (D) shall extend to all proceedings described in such subparagraphs which are pending on the date of enactment of this Act.

"(3)(A) When medical questions or questions relating to the vocational rehabilitation of a claimant are raised in a case in which the Conservator is a party pursuant to paragraph (2), the Conservator may order an examination or evaluation of the claimant in the proceeding by a physician whose services have been procured by the Conservator under paragraph (5)(B)(ii).

"(B) If a claimant refuses to comply with an order under subparagraph (A), the proceeding relating to the claimant's case shall be suspended and, in appropriate cases, the Secretary may suspend benefits, unless the physician or other individual who would be responsible for administering the examination or evaluation determines that the administration of the examination or evaluation would constitute a risk to the health of the claimant.

"(4)(A) Subject to such rules as the Conservation Committee may prescribe and to subparagraph (B), the Conservator may appoint and fix the pay of such professional and clerical personnel as the Conservator considers appropriate.

"(B) The staff of the Conservator may be appointed without regard to the provisions of title 5, United States Code (governing appointments in the competitive service), and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates).

"(5)(A) Subject to such rules as the Conservation Committee may prescribe, the Conservator may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

"(B) Subject to such rules as the Conservation Committee may prescribe, the Conservator may procure the services of—

"(i) counsel, subject to subparagraph (C), to represent the interests of the special fund in an administrative or judicial proceeding described in paragraph (2); and

"(ii) medical, vocational, and other experts and witnesses to defend a claim against the special fund.

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"(C) The Conservator shall establish standards for the selection of a counsel under subparagraph (A) which will ensure the selection of individuals who are specially qualified to serve by virtue of their education, training, or experience, including experience in the field of worker's compensation law.

"(c) All administrative expenses incurred by the Conservation Committee and the Conservator under this section shall be paid from the special fund.".

APPROPRIATION

SEC. 22. Section 45 is repealed.

AVAILABILITY OF APPROPRIATIONS

SEC. 23. Section 47 is repealed.

DISCRIMINATION AGAINST EMPLOYEES WHO BRING PROCEEDINGS

SEC. 24. (a) Section 49 is amended by inserting after the first sentence the following new sentence: "The discharge or refusal to employ a person who has been adjudicated to have filed a fraudulent claim for compensation is not a violation of this section.".

(b) The second sentence of section 49 is amended—

(1) by striking out "$100" and inserting in lieu thereof "$1,000"; and

(2) by striking out "$1,000" and inserting in lieu thereof "$5,000".

EFFECTIVE DATE

SEC. 25. The provisions of this Act and the amendments made by this Act shall be effective for an injury, disability, or death which occurs or commences on or after the date of enactment of this Act, except that (1) there shall be no liability for deaths from causes other than the injury, as provided in sections 8(d)(3) and 9 of the Longshoremen's and Harbor Workers' Compensation Act, as amended by Public Law 92-576, for any such deaths occurring on or after the date of enactment of this Act, and (2) the amendments made by section 14 of this Act relating to the modification of awards shall not apply to payments of compensation under the Black Lung Benefits Act (30 U.S.C. 901 et seq.).

Amend the title so as to read:

An Act to amend the Longshoremen's and Harbor Workers' Compensation Act to improve the administration of the Act, to reduce incentives for fraud and abuse, to assure immediate compensation benefits and competent medical treatment for injured employees, and for other purposes.

II. Summary of the Bill

S. 1182 amends the Longshoremen's and Harbor Workers' Compensation Act (hereinafter "LHWCA" or "Act") as follows:

1. Explicitly excludes fringe benefits from the definition of "wages."
2. Third-party negligence actions by shipyard employees otherwise covered under LHWCA against their shipyard employers in the latter's capacity as a vessel are barred, directly or indirectly.
3. Places a maximum limitation on death benefits, similar to that now placed on disability benefits.
4. Limits employer's responsibility for hearing loss to loss proven to have occurred while the employee was employed by the employer.
5. Increases compensation for facial disfiguration to $7,500.
6. Tightens employer access to special fund.
7. Requires payment of compensation during periods of vocational rehabilitation. Requires participation by employee in reasonable rehabilitation program.
8. Redefines wage earning capacity to eliminate consideration of potential future wage loss. Made subject to Section 22 modification.
9. Authorizes final settlement of claims, including death claims, and future medical claims if the parties so agree and expedites process. Protects employee from unfair settlement. Also repeals Section 14(j).
10. Eliminates compensation for death from unrelated causes in cases of permanent total disability. Increases funeral expense allowance to $3,000 and assures adequate death benefits.
11. Caps annual escalation of benefits at 5 percent.
12. Makes technical revisions to notice and reporting requirements.
13. Allows temporary expansion of BRB.
14. Makes technical amendments to reporting requirements and establishes substantial penalties for employers who willfully fail to report injuries.
15. Contains anti-fraud and employee, employer, and carrier penalty provisions.
16. Provides statutory formula for distribution of recoveries from persons other than the employer and ensures that the Special Fund recoups compensation paid by it.
17. Requires Secretary to make annual reports on administration of the Act.
18. Establishes special fund conservation committee and a fund conservator to ensure the proper administration of the fund and to provide that it is represented adequately in administrative and judicial proceedings.
19. Delineates more precisely the jurisdiction of the statute. Limits coverage to those employees and employers that are directly engaged in maritime employment, carving out certain excluded employments and employers.

III. Background and Need for Legislation

In 1917, the Supreme Court held in *Southern Pacific Company* v. *Jensen*, 244 U.S. 205, that the New York State workers' compensation law could not be constitutionally applied to an injury suffered by a long-shoreman while unloading a cargo ship. The Court invalidated application of the state law to an injury occuring over the navigable waters on the ground that the state workers' compensation act conflicted with the general maritime law and would lead to the application of dissimilar laws in a field which required national uniformity. Subsequent to *Jensen*. Congress twice enacted legislation to authorize States to apply their compensation statutes to injuries over navigable waters. Twice, the Court struck down the legislation as unlawful delegations of congressional power. (*Knickerbocker Ice Co.* v. *Stewart*, 253 U.S. 149 (1920); *Washington* v. *Dawson*, 264 U.S. 219 (1924)). Finally, in 1927 Congress succeeded in filling the void left in the wake of these early decisions; it enacted the Longshoremen's and Harbor Workers' Compensation Act, providing coverage to employees injured (including injury by occupational disease) while engaged in maritime employment over U.S. navigable waters.

In the ensuing years, other employee groups were covered under the Act. The District of Columbia Workmen's Compensation Act (1928) extended coverage to employees of private employers in Washington, D.C. The Defense Base Act (1941) extended coverage to employees of federal contractors at military bases or on public works contracts performed in any place outside the continental United States. The Nonappropriated Fund Instrumentalities Act (1952) applied the LHWCA to civilian employees of nonappropriated fund instrumentalities of the Armed Forces (such as post exchanges). In 1953, the Outer Continental Shelf Lands Act extended coverage to employees on the U.S. Outer Continental Shelf involved in exploring for and developing natural resources.

Since original enactment, the Act has been amended ten times. Amendments in 1934, 1938, 1948, 1956, 1960, 1961, and 1969 revised or increased benefits. In 1958, the Act was amended to require employers to maintain a reasonably safe work environment. The Secretary of Labor was directed to issue and enforce safety and health regulations. The 1959 amendments provided that, in certain cases, employees may collect compensation and bring suit against third parties. Standing apart from these amendments, however, are the 1972 Amendments (Public Law 92–576), for they represented a comprehensive revision of the Act in many respects.

In 1961, the Act was deemed a leader in the field of workers' compensation, with only four State compensation laws affording greater protection to injured workers and their families. By 1971, however, twenty States afforded injured workers greater protection, at least in terms of wage-loss benefits, than the Longshoremen's and Harbor Workers' Compensation Act. All the while the Act was falling behind in providing adequate income replacement benefits, the courts were seriously undermining one of the cornerstones of workers' compensation law—that it should be an exclusive remedy against employers for work-related injuries and death. Noteworthy decisions such as *Seas Shipping Co.* v. *Sieracki*, 328 U.S. 85 (1946), *Ryan Stevedoring Com-*

pany v. *Pan Atlantic S.S. Corporation*, 350 U.S. 124 (1956), *Reed* v. *The Yaka*, 373 U.S. 410 (1963), and *Jackson* v. *Lykes Brothers Steamship Company*, 386 U.S. 731 (1967), had the combined effect of exposing employers, typically stevedores, to multiple liability, commonly through first a workers' compensation claim and then in a lawsuit predicated on rules of strict liability under the doctrine of unseaworthiness coupled with rules of indemnity based on implied warranty of workmanlike performance. Thus, the 92d Congress in 1972 faced a very unsatisfactory state of affairs: Injured employees covered under the Act were not receiving adequate benefits from the workers' compensation system. Employers would not agree to substantial increases and revisions in the benefit structure as long as they faced significant liability in lawsuits brought outside the compensation system. The 92d Congress eventually was able to forge a comprehensive set of revisions as the tenth amendment to the LHWCA.

The 1972 Amendments were designed to eliminate the weaknesses of the Act. Benefits were greatly improved. Changes were made in the administration and adjudication of claims. Limitations were placed on third party lawsuits to reduce the exposure to multiple liability by employers. Finally, the 1972 Amendments extended coverage to shoreside areas. This latter change was prompted by the fact that LHWCA coverage generally ceased at water's edge so that employees otherwise covered under the Act could literally walk out of coverage by simply going shoreside in the course of employment. As the Senate and House Committee Reports noted: "Compensation * * * should not depend on the fortuitous circumstances of whether the injury ocurred on land or over water." (S. Rep. No. 92–1125, 92d Cong., 2d Sess. at 11 (1972); H.R. Rep. No. 92–1441, 92d Cong., 2d Sess. at 10 (1972).)

Beginning in 1977, the respective labor committees of the Senate and the House have conducted series of oversight hearings on the LHWCA and on the impact of the 1972 Amendments. The Subcommittee on Compensation, Health and Safety, of the House Committee on Education and Labor held eight days of hearings during the first session of the 95th Congress and nine days of hearings in the second session. Hearings continued in both the House and the Senate during the 96th Congress. Employers, insurance carriers, unions, and employee representatives presented varying views. Employers and carriers expressed concern over unclear jurisdiction, benefit levels, unrelated death benefits, annual adjustments in compensation, the Special Fund's growing liability, and the timely administration and adjudication of claims. Employee representatives expressed overall support for the current law but indicated concern over inadequate administration by the Department of Labor.

It is clear from the abundant record developed at the oversight hearings that a pressing need exists to revise portions of the Act. The courts and agencies have found coverage to exist in situations which are not warranted. Features of the benefit structure have made it difficult to calculate future costs, and in some cases made Act uninsurable. Claims processing features have made the Act susceptible to fraud and abuse. Finally, the Act does not contain sufficient incentives for injured workers to seek rehabilitation and to return to work.

IV. History of S. 1182

At the beginning of the 97th Congress, the Permanent Subcommittee on Investigations of the Senate Committee on Governmental Affairs held six days of hearings on waterfront corruption and the influence of organized crime in a number of east and gulf coast ports. The hearings were the culmination of an investigation commenced the previous year by Senator Nunn and the Department of Justice's Operation UNIRAC.

Soon after the conclusion of the Permanent Subcommittee Investigation hearings, Senators Nickles and Nunn on May 14, 1981 introduced the comprehensive Longshoremen's and Harbor Workers' Compensation reform bill S. 1182. This Committee's Subcommittee on Labor held four days of hearings on S. 1182 and developed a hearing record of 1241 pages. Interested parties from labor, management, and government presented their views.

The following criticisms emerged from these hearings:

First, Jurisdiction: It is alleged that the extension to "adjoining" areas leave vague and unclear just what operations on land are covered. The small recreational boatyards, in particular, are in a state of uncertainty as to the status of their employees working at locations which are not geographically adjacent to navigable waters. The small boat and barge builders expressed concern about their employees who may be involved in nonmaritime construction during extensive periods of the year.

Second. Unrelated death benefits: The law provides that if a claimant receives compensation benefits for either permanent partial or permanent total disability and then dies from any cause, his widow and/or survivors would be entitled to certain benefits. It is contended this has the effect of adding a life insurance policy to a workers' compensation law.

Third. Annual escalation of benefits: It has been contended that the unpredictability of future, annual escalation of benefits makes insurance premium assessment equally unpredicable, resulting in higher insurance costs.

Fourth. No limitation on weekly benefits to widows and/or survivors in case of death: Since there is a maximum payable for total permanent disability, it is alleged that, in certain instances, a widow could receive higher benefits from the death of the employee than if he was receiving total permanent disability benefits.

Fifth. Procedure for establishing loss of wage-earning capacity: It has been stated that in some cases a claimant receives compensation in excess of his take-home wages prior to injury.

Sixth. Employers' access to an independent physical examination: It has been alleged that in certain district offices, the deputy commissioners are unwilling to order an independent medical examination of a claimant at the request of an employer.

Seventh. Settlements: It has been alleged that the administrative law judges have no authority to approve settlements, which results in excessive litigation.

Eighth, Waste, fraud, and abuse: During the course of the hearings before the Permanent Subcommittee on Investigations as well as this Committee's consideration of the bill, testimony was received concern-

ing the potential for abuse of this Act. It has now been clearly established that, in certain instances, the provisions of the Act have been abused by corrupt individuals so that corrective action to eliminate this potential is necessary.

On October 28, 1981, the Labor Subcommittee reported to the full Committee the bill with an amendment in the nature of a substitute. On December 15, 1981, February 9, and May 25, 1982, the full Committee met in executive session to consider the bill. An amendment in the nature of a substitute was adopted and ordered reported by unanimous vote. The Committee amendment, as explained below, addresses each of the above concerns.

V. Hearings

Public hearings on S. 1182 were conducted by the Subcommittee on Labor on June 16, 17, 23, and October 5, 1981. The following individuals provided testimony:

TUESDAY, JUNE 16, 1981

Hon. Sam Nunn, a U.S. Senator from the State of Georgia.

William L. Gardner, Esq., representing Braswell Shipyard, Inc., S.C., accompanied by James Braswell, vice president, Braswell Shipyards, and Rick Meitzler, safety director, Braswell Shipyards; R. A. (Red) Osborn, Jr., Esq., representing the National Association of Manufacturers and the New Orleans Steamship Association, accompanied by Daniel Vannoy, director, product liability and employee compensation systems for National Association of Manufacturers; William T. Taylor, Esq., representing National Steel and Shipbuilding Co., a panel.

William H. Huff III, senior vice president and general counsel, Employers Insurance of Texas, accompanied by Pat Whatley, associate actuary, and Roy Moore, manager, Maritime Claims; William Lachner, vice president, special risk facility, Insurance Company of North America; James F. Hughes, vice president, Midland Insurance Co., New York.

Hon. Samuel J. Smith, Chief Administrative Appeals Judge, Benefits Review Board, U.S. Department of Labor, accompanied by Brian Meyers, acting senior board attorney.

WEDNESDAY, JUNE 17, 1981

Robert N. Steiner, assistant director, Port Department, New York, Port Authority of New York/New Jersey.

Thomas D. Wilcox, executive director and general counsel, National Association of Stevedores, accompanied by Arthur E. Erb, president, National Association of Stevedores; and Dennis Lindsay, Esq., representing Master Contracting Stevedore Association of the Pacific Coast, Inc.

Patrick J. Sullivan, legislative director, International Longshoremen's Association, Washington, D.C., accompanied by Joe Leonard; Michael Lewis, Washington representative, ILWU, accompanied by Bruce Krieger, welfare affairs, ILWU; and Bill Luch, ILWU Local 8, Portland, Oreg.

Frank Guillen, welfare officer, local 9, of the Industrial Union of the Marine & Shipbuilding Workers of America, accompanied by Tom Perry, counsel; Jim Harmon, executive secretary; and Kevin Sullivan; and John J. Sheehan, legislative director, United Steelworkers of America, accompanied by John Hower, subdistrict director, Virginia area; Carl Hall, chairman, Tenneco local union, Newport News, Va.; David Demilano, Washington staff.

Edwin M. Hood, president, Shipbuilders Council of America, accompanied by Bill Welch, chairman, workers' compensation committee; Stephen B. Clarkson, Stewart E. Niles, Jr., and Junius C. McElveen, Jr., special counsel.

William H. Potter, president and treasurer of Fairhaven Marine, Inc., Massachusetts, representing American Boat Builders & Repairers Association, Inc.; John Buursema, president of Twin City Shipyard, St. Paul, Minn., representing American Waterways Shipyard Conference; and Robert J. Massman, secretary of Massman Construction Co., St. Louis, Mo., a panel.

TUESDAY, JUNE 23, 1981

Bert J. Leavitt, president, Leavitt Insurance Agency, Las Vegas, Nev., chairman, National Insurance Producers Conference, and president, National Association of Professional Insurance Agents; Frank L. Eblen, vice president, Johnson & Higgins, New York, N.Y., and member, National Association of Insurance Brokers, Inc.; Howard J. Cornay, Jr., senior vice president, Bayly, Martin & Fay, Inc., Lafayette, La., and member, National Association of Casualty & Surety Agents; Paul D. Snodgrass, Ralph W. Lee & Co., Washington, D.C., president, Metropolitan Washington Independent Insurance Agents, and member, Independent Insurance Agents of America, Inc.; and Daniel J. Blum, president, Insurance House, Inc., Lafayette, La., and member, National Association of Professional Insurance Agents, a panel.

Hon. John Erlenborn, a Representative in Congress from the State of Illinois.

Jay Power, legislative representative, American Federation of Labor and Congress of Industrial Organizations, accompanied by Larry Smedley, social security department, AFL–CIO; Frances Zwenig, legislative representative, Building and Construction Trades Department, AFL–CIO, accompanied by Donald Elisburg, former Assistant Secretary of Labor for Employment Standards; and Ande Abbott, international representative, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL–CIO, a panel.

Andre Maisonpierre, senior vice president, Alliance of American Insurers, accompanied by Roy Kallop, vice president and actuary, National Council on Compensation Insurance Robert W. Flockhart, counsel, American Insurance Association; and Howard Bunn, vice president for workers' compensation, National Association of Independent Insurers, a panel.

MONDAY, OCTOBER 5, 1981

Hon. Robert B. Collyer, Deputy Under Secretary, Employment Standards Administration, Department of Labor, accompanied by Ralph M. Hartman, Director, Office of Workers' Compensation Programs; Neil Montone, Associate Director of OWCP for Longshore and Harbor Workers' Compensation, and James DeMarce, Executive Assistant to the Director.

VI. Committee Views on S. 1182

JURISDICTION

As one commentator has noted, the Longshoremen's Act by 1969 had "achieved a unitary and almost litigation-free rule of coverage." [1] Generally, coverage was limited to employees working on navigable waters, including those working on dry docks. But certainty of coverage carried a price for the worker. As reflected in the committee reports accompanying the 1972 Amendments, the then existing coverage rules made for disparity in benefits, arising simply out of the fortuitous circumstance of whether an employee suffers the same type of injury over the water (thus becoming entitled to the higher benefits provided under the LHWCA) or on land (thus becoming entitled to the often lower benefits under a State workers' compensation program). In addition, the committees took note of how modern technological advances, such as cargo handling by containerization, had led to more of the covered work, theretofore being performed over navigable waters, now being performed on land. The old coverage rules did not take this migratory trend of work activity into account

To achieve the twin goals of equality in benefit payments and a uniform compensation system, the 1972 Amendments changed the rules of coverage. The intention was to extend coverage to shoreside areas, with the test of coverage involving an examination of (1) the geographic location of the occurrence of the injury which results in disability or death (LHWCA § 3(a), 33 U.S.C. § 903(a) (1976)), and (2) the occupational activities of the injured employee (LHWCA § 2(3), 33 U.S.C. § 902(3) (1976)). But the decade of experience under the 1972 Amendments has vividly demonstrated that the effort to eliminate benefit disparity and to promote systemic uniformity has exacted a price, too. The rules of coverage, in the words of one authority, have been a "doubly prolific generator of litigation." [2] The courts and the Benefits Review Board have had to delineate the limits of jurisdiction in a diversity of factual patterns. Though the limits of jurisdiction have begun to emerge out of the judicial process, a degree of uncertainty still exists regarding the parameters of coverage. Moreover, the lower courts as well as the Benefits Review Board in the past have often been divided on the proper criteria for determining such issues as "maritime employment" and "adjoining area." (See, e.g., discussion in

[1] 4 A. Larson, Workmen's Compensation § 89.27, at 16–178 (1982).
[2] 4 A. Larson, Workmen's Compensation § 89.27, at 16–178 (1982).

4 A. Larson, Workmen's Compensation § 89.42 at pp. 52–53 (Supp. 1981)). And the BRB itself has frequently stated that it does not feel especially bound by circuit court decisions. (See, e.g., *Arbeeny* v. *McRoberts Protective Agency, Inc.*, 12 BRBS 435, 437n.2 (1980), *rev'd.* 642 F.2d 672 (2d Cir. 1981).) Thus there remains a realistic potential that when a court or the BRB decides a case of coverage, the issue will nevertheless face continual relitigation in other forums.

This situation presents an unsatisfactory state of affairs. Uncertainty of coverage fosters continued litigation, with attendant expense and delay that is a burden to employers, their insurance carriers, and claimants. Further, it was repeatedly voiced at the hearings that employers were often unsure whether to obtain LHWCA insurance coverage. Even when they opted for such insurance, they generally found that the premiums were inordinately expensive. Or, in many instances, employers were unable to buy insurance coverage, because the insurance companies did not want to be faced with vagaries of coverage.

The Committee was presented with divergent solutions to this problem by maritime labor, management, the insurance industry, the Secretary of Labor, and other interested parties. One proposal was to extend jurisdiction shoreward to workers well beyond navigable waters and adjacent areas. Another proposal returned jurisdiction to its pre-1972 limits by covering only those workers situated seaward from the water's edge.

The Committee, after examining the problem and the proposed solutions, does not believe it appropriate to adopt either extreme. Likewise, because the existing body of statutory and decisional law does not admit to easy synthesis, the Committee has not attempted an overall evaluation or rationalization of such law. Rather the consensus among the Committee Members was to reaffirm the purposes of the 1972 jurisdictional changes, and in that light, the Committee narrowed its focus to certain fairly identifiable employers and employees who, although by circumstance happen to work on or adjacent to navigable waters, lack a sufficient nexus to maritime navigation and commerce. The Committee's attention was directed to specified activities which were singled out for criticism by numerous witnesses before the Committee. Under this case-specific approach, the Committee has determined that certain activities do not merit coverage under the Act and that the employees involved are more aptly covered under appropriate state compensation laws.

The excluded employees include:

(1) Employees exclusively performing office clerical, secretarial, security, or data processing work;

(2) club, camp, restaurant, museum, retail outlet and marina personnel;

(3) personnel of suppliers, transporters or vendors temporarily doing business with covered employers;

(4) aquaculture workers;

(5) certain personnel employed in specified grain loading operations;

(6) persons engaged in the construction or repair of recreational vessels under 65 feet in length and certain shipbuilders and ship repairmen building specified barges and vessels;

(7) a master or member of the crew of any vessel wherever situated; and

(8) any person engaged by the master of a vessel to load, unload, or repair a vessel of displacement less than eighteen tons net.

Also the amendments specifically exempt the following employers:

(1) clubs, camps, restaurants, museums, retail outlets, and marinas;

(2) aquaculture farms; and

(3) builders or repairers of certain small vessels.

By carving out these exclusions, the Committee wishes to stress what this amending process does *not* involve. It is the Committee's intention that these amendments not be interpreted to enlarge the present scope of the Act's coverage. Nor is it the Committee's intention to include classes of employers not already subject to the Act. Finally, with the committee making only limited changes to section 2(3), section 2(4), and section 3 of the Act, it is obvious that a large body of decisional law relative to traditional maritime employers and harbor workers remains undisturbed. The decision not to evaluate, endorse, or reject, explicitly or implicitly, the lower court and agency decisions in these other areas was made deliberately by the Committee in conjunction with the limited changes that are being made.

Exemption for Specified Small Shipbuilders

Among the more important exclusions are certain small vessel builders and repairers. The terms "employer" and " employee" are amended to provide generally that an exclusion from Longshore Act coverage is applicable to (1) any ship repairman, shipbuilder, or shipbreaker engaged by small vessel operations as described by section 2(4)(B)(iii) of the Act, as amended, and (2) employers or operations of employers who, for purposes of the Longshore Act, are solely and exclusively in the business of building, repairing, or dismantling the small vessels described by section 2(4)(B)(iii) of the Act, as amended. If, however, an employer's shipyard facility is also directly engaged in activities unrelated to building, repairing, or dismantling small vessels, which independently bring the employer within the coverage of the Act (*e.g.*, longshoring operations), those activities are not subject to the small vessel "employer" exclusion and are covered by the Act.

Additionally, the exclusion applies only with respect to work on areas landward of the navigable waters. This includes work on a "pier, wharf, building way, marine railway, graving dock, shop, or any other facility or area over land customarily used in ship repairing, shipbuilding or shipbreaking." The exclusion does not apply to work conducted "over-the-water" and such work will continue to be subject to Longshore Act coverage.

Eligibility for the small vessel exclusion depends upon whether the employer builds, repairs, or dismantles:

(1) commercial barges under 900 lightship displacement tons (long);

(2) commercial tugboats, towboats, crew boats, supply boats or fishing vessels under sixteen hundred tons gross; or

(3) recreational vessels under 65 feet in length.

For purposes of this exclusion from Longshore Act coverage, the commercial barge exception is expressed in terms of vessel weight

measurement (*i.e.*, lightship displacement tons (long); one long ton equals 2,240 lbs.), the alternative general commercial work boat exception is expressed in terms of vessel volume measurement (*i.e.*, gross tons; one gross ton equals 100 cu. ft.), and the recreational vessel exception is expressed in terms of vessel length measurement. These varying units of measurement were selected by the Committee as best expressing the characteristics of the different vessels against the objective of limiting the small vessel exclusion to relatively "small" vessel operations. The amendment contains a gross tonnage jurisdictional measurement. It is the intent of the Committee that this vessel size for jurisdictional cutoff purposes remain at 1,600 gross tons as measured by the current formula contained in the act of May 6, 1864 as amended through 1974 (46 U.S.C. § 77), and that the measurement for purposes of LHWCA should not be altered because of any future amendment to the act of May 6, 1864 or any recommendation of the International Conference on Tonnage Measurement.

There are additional limitations to the exclusion. A shipyard operation must be in the business of building, repairing, or dismantling solely and exclusively "small" vessels (as described by section 2(4)(B)(iii) of the Act, as amended) in order to qualify for the exclusion. If an operator is engaged in building or repairing small vessels (as described by the provision) and also in work on a larger vessel not subject to the exclusion (*e.g.*, a self-propelled work vessel in excess of sixteen hundred tons gross), the exclusion is inapplicable and the otherwise excluded small vessel activity as well would be subject to Longshore Act coverage. The provision thus ensures that the exclusion applies only to operations where *all* work undertaken is with respect to small vessels.

Additionally, the exclusion applies only to operations which are in the business of building, repairing, or dismantling *commercial* barges, tugboats, towboats, crew boats, supply boats or fishing vessels. The emphasis is on the use in commerce of these vessels being built or repaired. Shipyard operations which are in the business of non-commercial vessel work (e.g., military supply boat construction) on these vessels are not entitled to the exclusion regardless that the non-commercial vessel may be "small" under the terms of the provision.

Further limitations to the availability of the small vessel shipyard facility exclusion may apply depending upon the respective vessel category of the exclusion. For instance, the commercial barge activity must be limited not only to barges under 900 lightship displacement tons but also to barges used or intended for use on the inland waters of the continental United States as defined in 33 U.S.C. § 1321:

> * * * those waters of the United States lying inside the baseline from which the territorial sea is measured and those waters outside such baseline which are a part of the Gulf Intracoastal Waterway.

Thus, work on ocean-going barges is not subject to exclusion from Longshore Act coverage. The domestic purpose clause limits this exception to barges used or intended for use in the domestic trades. The Committee intends that use in the domestic trades be the controlling factor in administering this limitation. The definition contained in 33 U.S.C. § 1321 provided a benchmark reference for giving specific

content to this objective. However, the Committee does not intend that barges be viewed as outside the domestic purpose limitation simply because they may find fortuitous or occasional use in coastal waters beyond the inland waters definition in 33 U.S.C. § 1321.

The alternative general commercial work boat exception does not contain such a domestic purpose requirement but does specify certain types of vessels at operations to be excluded from Longshore Act coverage by stipulating "tugboats, towboats, crew boats, supply boats, or fishing vessels under sixteen hundred tons gross" as vessels for which building, repairing, or dismantling activity may qualify the shipyard operation for exclusion from federal coverage *provided* that no other vessel building, repairing, or dismantling activity occurs at the operation with respect to vessels sixteen hundred tons gross or more. Thus, a shipyard operation which is in the business of building or repairing tugboats under sixteen hundred tons gross, for instance, will qualify for exclusion from Longshore Act coverage so long as it is not engaged in building, repairing, or dismantling any other vessel which is sixteen hundred tons gross or more.

The recreational vessel exception excludes operations which work on such vessels under 65 feet in length provided there is no work at the operation on a vessel which is 65 feet in length or more.

A shipyard operation may qualify for exclusion from Longshore Act coverage under more than one of the exceptions discussed above depending upon the types and sizes of vessels involved. An overriding requirement for qualification for exclusion from coverage, however, is that the particular shipyard facility not receive federal maritime subsidies. This final restriction is intended to continue within federal coverage operations of employers who receive the direct maritime subsidies contained in the Merchant Marine Act, 1936, as amended; specifically, the Construction Differential Subsidy program (CDS) and the Operating Differential Subsidy program. For example, if an employer's operation enters into a CDS contract with the government and receives a subsidy for the construction of a vessel the employer's operation would not be eligible for exclusion from Longshore Act coverage regardless of the nature of vessel work undertaken at the operation. Employers who may benefit indirectly or non-volitionally from the operation of various government policies and programs (*e.g.*, special tax treatments, cabotage laws, financing guarantees) are not affected by this maritime subsidy limitation.

Exemption for Commercial Aquaculture Operations

Another exclusion from coverage under the Act concerns those employees of commercial aquaculture operations. For purposes of this exclusion, the Committee defines "aquaculture operations" as those commercial enterprises involved in the controlled cultivation and harvest of aquatic plants and animals. The Committee recognizes and intends that this definition, as established in the National Aquaculture Act of 1980, 16 U.S.C. § 1801, encompasses a substantial part of the domestic shellfish cultivation and harvesting industry which utilizes municipally leased and/or private growing waters and beds for the controlled growing and harvesting of shellfish species such as oysters, clams, mussels, and abalone. In addition, the controlled growing and harvesting of other aquatic species, such as salmon, trout and crayfish, would also fall within the meaning of aquaculture.

Exemption for Specified Employers and Employees

Additionally, the Committee would like to clarify that certain establishments, and their employees, such as clubs, camps, restaurants, museums, retail outlets and marinas are exempt from coverage regardless of their location.

The Committee received numerous complaints from these employers and their insurance carriers that indicate a general confusion as to whether or not the Longshore Act applies. These businesses are operated on or over a navigable water and insurance carriers, fearing a claim under the Act, often require Longshore riders on their workers compensation insurance policies.

The Committee believes that these employers lack the necessary nexus to maritime employment and commerce and therefore are properly exempted from the jurisdiction of the Act.

Exemption for certain clerical employees

The Committee amendment excludes from coverage certain clerical employees—office clerks, secretaries, security guards, data processors—who exclusively perform their duties on the premises of those maritime employers covered by the Act.

The Committee amendment, does not, however, exempt those clerical employees directly associated with the loading, unloading, or shipbuilding operations of these covered employers. For example, those Longshoremen employed as checkers would continue to be covered under the Act even though their duties may at times remove them from the loading and unloading operations and require their presence in a non-covered operation of their employer; those checkers performing exclusively clerical duties directly related to loading and unloading operations also remain covered.

Those employees, on the other hand, who are performing exclusively clerical duties that are not directly related to shipbuilding, loading, or unloading operations—are covered by the Committee amendment. The Committee believes that there is ample justification for this exclusion as these employments are certainly covered by state worker's compensation laws.

Exemptions for certain employees temporarily on the premsies of covered employers

The Committee amendment clarifies that certain employees of other employers temporarily on the premises of covered employers are excluded from the jurisdictional reach of the statute. For example, truck drivers, salesmen, and personnel engaged in supplying components, parts, and services to traditional maritime employers are excluded by this provision.

The concern expressed frequently to the Committee by many parties is that the courts have often extended jurisdiction to these types of employees by virtue of both where they temporarily perform their duties and by the nature of the work itself. The Committee, in examining this confusing situation, concludes that: (1) location alone is not sufficient to clothe them with coverage and (2) the duties of these employees are not an integral part of traditional maritime employment. Therefore, the Committee believes it necessary to exclude these employees from coverage.

EXCLUSION OF FRINGE BENEFITS FROM THE DEFINITION OF WAGES

In amending section 2(13) of LHWCA, the Committee expressly rejects the holding in *Morrison-Knudsen* v. *Director, OWCP*, 670 F.2d 208 (D.C. Cir. 1981).

EXCLUSIVENESS OF REMEDY AND THIRD PARTY LIABILITY

Exclusiveness of remedy

Judicial interpretations of the Act have allowed for dual recovery under both state workers' compensation and LHWCA. This violates the principle of workers' compensation that it is the employer's exclusive remedy. Current law undermines this principle when an employer faces both federal and state programs. Therefore, in amending section 5(a), the Committee reaffirms exclusivity by providing liability under LHWCA in lieu of any liability under a state workers' compensation statute or the Jones Act.

It was also brought to the Committee's attention that, for example, an employee will file under a state workers' compensation system first, begin receiving benefits, and then file a claim under LHWCA. Even if a state eventually terminated payments and compensation was paid only made LHWCA, the claimant would have a windfall from the state benefits. To prevent this type of abuse, the Committee added a new provision in section 3 to provide an offset. As a result, benefits received under LHWCA will be reduced by amounts received by the employee under a state system.

Third party liability

The 1972 Amendments recognized the need for special provisions to deal with a case where a longshoreman or shipbuilder or repairman is employed directly by the vessel. Prior to 1972, notwithstanding the fact that the vessel was the employer of a covered employee and that LHWCA workers' compensation was available to the employee, the Supreme Court in *Reed* v. *The Yaka*, 373 U.S. 410 (1963) and *Jackson* v. *Lykes Brothers Steamship Company*, 386 U.S. 731 (1967), held that the employee in addition could bring a third party action against the employer, predicated on the strict liability theory of unseaworthiness. Such an action was deemed to arise under admiralty law, which accorded the employer the separate legal status of a vessel. The congressional committees concluded that the rights of an injured longshoreman or shipbuilder or repairman should not depend on whether he was employed directly by the vessel or by an independent contractor (such as a stevedore). Accordingly, the 1972 Amendments, by the addition of subsection 5(b), limited significantly (but not entirely), the availability of third party actions against an employer-vessel.

First, actions based on warranty of unseaworthiness were barred. (See fourth sentence of section 5(b), 33 U.S.C. § 905(b) (1976)). Second, while negligence actions were allowed against the employer-vessel (see first sentence of section 5(b), 33 U.S.C. § 905(b) (1976)), the scope of actionable negligence was narrowed as follows: In the case of a longshoreman who is employed directly by the vessel there will be no action for damages if the injury was caused by the negligence of persons engaged in performing longshoring services. (See second sentence of section 5(b), 33 U.S.C. § 905(b) (1976).) Likewise, in the case

of a person who is employed directly by the vessel there will be no action for damages if the injury was caused by the negligence of persons performing shipbuilding or repair services. (See third sentence of section 5(b), 33 U.S.C. § 905(b) (1976).) However, apart from these limitations, an employer-vessel would not be relieved of liability for other, "owner" occasioned negligence. See, e.g., *Lundy* v. *Litton Systems, Inc.*, 624 F.2d 590 (5th Cir. 1980); *Smith* v. *Eastern Seaboard Pile Driving, Inc.*, 604 F.2d 789, 795 (2d Cir. 1979); *Griffith* v. *Wheeling Pittsburgh Steel Corp.*, 521 F.2d 31, 43–44 (3d Cir. 1975).

Witnesses on behalf of shipyards testified that since 1972 experience under section 5(b) has not been satisfactory. They expressed the view that the LHWCA should adhere more closely to the principle that employers should be responsible for workers' compensation exclusive of any other recovery against the employer, such as that available under the theory of negligence under section 5(b). The Committee, after examining the matter closely, believes that the shipbuilders have made a valid point. The 1972 Amendments have provided generous compensation benefits to covered employees, and to allow in addition liability predicated on negligence is burdensome on the shipyard employer. Accordingly, the Committee amendment amends the LHWCA to insulate employers, such as shipyards, engaged in shipbuilding and repair services to a vessel from liability to covered LHWCA employees under the negligence actions now authorized under section 5(b).

The statutory immunity is achieved by amending the third sentence of section 5(b), which presently only partially immunizes employer-vessels such as shipyards from negligence actions.

The Committee amendments provides that where the employee was employed to provide ship building, repairing, or breaking services and such person's employer was the owner, owner pro hac vice, agent, operator, or charterer of the vessel, no negligence action shall be permitted, in whole or in part or directly or indirectly, against the injured person's employer in any capacity including but not limited to that as the vessel's owner, owner pro hac vice, agent, operator, or charterer, or against the employees of the employer.

To illustrate how the exemption will operate, a couple of examples are noted. Suppose that a shipyard is engaged in the construction of a new vessel; in such situation, the shipyard would be regarded as the actual owner of the vessel, and thus under the definition of "vessel" (section 2(21) of the Act, 33 U.S.C. § 902(21) (1976)) would be considered a vessel for purposes of section 5(b) liability. An employee engaged in ship building for the shipyard employer is injured on the vessel and has a compensation claim under the LHWCA. (See, e.g., *Lundy* v. *Litton Systems, Inc.*, 624 F.2d 590 (5th Cir. 1980).) Under the Committee amendment, the employee would not be permitted to bring an action in negligence against the shipyard employer.

In regard to the above example, it should further be noted that it would not be proper to bring an action in rem against the vessel itself. By barring the negligence claim against the shipyard as owner of the vessel, it follows that any claim against the vessel itself is barred. Cf. *Consumers Import Co.* v. *Kabushiki Kaisha Kawasaki Zosenjo*, 320 U.S. 249 (1943) (holding that for damage to cargo by fire not caused by the design or neglect of the shipowner, the Fire Statute,

46 U.S.C. § 182 (1976), extinguishes claims against the vessel as well as claims against the owner).

As a second example, suppose that a shipyard is engaged in the repair of tanker vessel owned by an oil company; in such situation, the shipyard might be regarded as the owner pro hac vice and the oil company is the actual owner. An employee engaged in ship repair for the shipyard employer is injured on the vessel and has a compensation claim under the LHWCA. Suppose the employee alleges that the injury was caused by the joint negligence of the shipyard employer and the oil tanker. Cf. *Griffith* v. *Wheeling Pittsburgh Steel Corp.*, 521 F. 2d 31 (3d Cir. 1975) (involving second sentence of section 5(b) and alleged liability of employer-vessel in connection with employee hired directly for longshoring services). Under the Committee amendment, the employee would not be permitted to bring an action in negligence against the shipyard employer.

In regard to the above example, it is noted that the employee would still be permitted to bring an action against the oil tanker's actual owner for its alleged negligence. However, in including the phrase "in whole or in part or directly or indirectly" in the Committee amendment, the Committee intends that the actual owner in turn not be able to bring its own action against the employee's shipyard employer under any contractual or tort theory of indemnification or contribution. This reiterates the policy contained in the first sentence of section 5(b) against circumventing the exclusivity of remedy principle.

The foregoing examples are by no means exhaustive. Other situations may arise where the employer will be deemed a vessel by virtue of its being an operator, charterer, or agent of the vessel itself, and, but for the exemption provided in the third sentence of section 5(b) might face a suit in negligence under the first sentence of section 5(b). The third sentence of section 5(b) as amended by the Committee amendment, however, will serve to achieve the goal of making workers' compensation under the LHWCA the exclusive remedy against an employer and insulating the latter from multiple liability

MAXIMUM COMPENSATION FOR DEATH BENEFITS

Hearings before this Committee and in the House identified as a serious problem the omission of a maximum benefit level to apply to death claims. Prior to the 1972 amendments to the Act the maximum benefit levels for disabled employees and survivors had always been identical. The removal of the cap on survivor benefits resulted in survivors being entitled to higher weekly workers' compensation benefits than disabled employees would be entitled to receive under section 8.

The Supreme Court in the *Director, OWCP* v. *Rasmussen, 440* U.S. *29* (1979, held that the maximum did not apply to death claims. The failure to place a uniform maximum limitation on death claims has given rise to a number of serious problems which the Committee intends to correct with this amendment.

Accordingly, the Committee is reinstating both in sections 6(b)(1) and 9(c) of the LHWCA the equality in the treatment of maximum entitlements as regards disabled and survivors which had existed for almost 50 years prior to the 1972 congressional action. The Committee

is limiting the maximum weekly death payments to an amount not to exceed 200 percent of the national average weekly wage and specifically rejects the conclusion and decision of the Supreme Court in the *Rasmussen* case.

CAP ON ESCALATION

Witnesses testified that one of the most costly amendments injected in the 1972 act was the annual indexing of benefits. The present law provides that total disability and survivor benefits, once awarded, be increased each year by the increase in the national average wages. There is no cap to such escalation.

Nevertheless, the Committee believes that there is good justification for some escalation of long term benefits in an economy which is subject to inflation. Efforts should be made to keep benefit levels abreast of the cost of living. They should not, however, as is the present case, be allowed to increase at unforseeable rates.

The Committee bill recognizes the desirability of escalating benefits. The Committee capped these benefits in both section 9 and section 10(f) of the Act, however, to an amount not to exceed the yearly increase in the average national wages or 5 percent, whichever is less. These limits are extended by the Committee to apply regardless of the date of the injury or death.

The Committee believes that this provision is fair to all parties. It protects the injured and survivors against the inroads of inflation. It recognizes the tax free nature of these benefits. The Committee has been assured that placing a limit on the escalation injects a greater degree of certainty on the program. This will reduce cost and should bring insurers back into the coverage of the Longshoremen's and Harbor Workers' Compensation Act.

INCREASE ON FUNERAL AND FACIAL DISFIGUREMENT BENEFIT

The Committee believes that the existing law provides an unrealistically low benefit in the maximum compensation allowable for serious disfigurement. Also the maximum allowance provided as reimbursement for funeral costs is inadequate based on today's cost.

The Committee accordingly increased the maximum permissible payment for disfigurement from $3,500 to $7,500.

To be entitled to a disfigurement award the injury must be limited to the face, head or neck or for other normally exposed areas likely to handicap the employee in securing or maintaining employment. The Committee does not intend by this increase in the maximum benefit payable for disfigurement to encourage administrators to increase the evaluation of the benefit to be paid in cases of injuries which do not presently warrant an award at the maximum level.

With respect to funeral benefits, the Committee wishes to emphasize that the law provides for a reimbursement of actual out-of-pocket costs incurred by the estate of the deceased. The Committee increased the maximum permissible amount for funeral reimbursement from $1,000 to $3,000.

SPECIAL FUND

Section 8(f) of the Act was designed to encourage employers to hire and retain disabled workers by distributing much of the additional cost of industrial injury attributable to pre-existing permanent dis-

abilities among all employers and carriers subject to the Act. An employer able to demonstraate actual or, in some cases, constructive knowledge that an injured worker had a permanent disability which pre-dated a compensable injury is often able to shift to the Special Fund the responsibility for paying a very substantial portion of the amounts payable to the worker. The liabilities of the Fund are then broadly distributed through the assessment mechanism provided in Section 44 of the Act.

The goals of Section 8(f) remain valid. However, the current Act does not provide the means for assuring adequate review of claims to Section 8(f) or properly defending the interests of the Fund and its collective contributors. When coupled with the very substantial financial incentives to seek section 8(f) relief, these failings of the current Act have increased the expenses of assuring continued employment opportunities to previously disabled workers beyond necessary levels.

The bill amends Section 8(f) of the Act (Section 7(f) of the bill) to increase from two years to four years the period for which the employer must pay benefits before payment responsibility may transfer to the Special Fund. In addition, the bill amends Section 45 of the Act (Section 21 of the bill) to establish a Conservation Committee and a Fund Conservator and provides them with all authority needed to protect the Fund's financial integrity and assure that all payments from the Fund are made in accordance with law.

Responsibility for the special fund should be commensurate with the level of financial accountability. The fund is composed almost entirely of assessments made on carriers and self-insureds. These funds are then utilized not only for § 8(f) cases but also for vocational rehabilitation under §§ 8(g) and 39(c), medical examinations under § 7, and employer insolvency under § 18(b). Testimony indicated inadequate management of this special fund, particularly in § 8(f) cases. Therefore, the Committee believes that it is appropriate for the fund's contributors to play a participatory role in monitoring the outlays from the fund through the Conservation Committee.

MEDICAL CARE

A number of changes have been made in Section 7 which are designed to meet problems faced by segments of the covered population. Throughout, however, the right of the claimant to choose an attending physician has been retained as under current law.

In an effort to limit the opportunity for potential misuse of the process, the new sections require the Secretary to refuse authorization for physicians for purposes of treatment where the particular medical provider has been indicted or convicted of criminal fraud or has violated federal regulations in connection with medical care programs such as Medicaid or its equivalents. Exclusion from such a program will also result in removal as well from the Secretary's authorized list. Exclusion may also result, after notice and hearing, if the physician makes a false statement in connection with any service provided under the Act or submits a bill substantially in excess of the charges prevailing in the community or provides a service substantially in excess of the claimants need. Those providers who are no longer authorized shall have their names published by the Secretary for distribution to the various districts.

Under the new amendment, the injured worker can make an initial choice of physician, but may not thereafter change physicians without the approval of the employer or carrier. Such approval is to be given, however, when the initial choice was of a general practitioner and a specialist's services are thereafter required.

HEARING LOSS

The only change in the list of injuries on the schedule is in the hearing loss subsection. The amendment addresses the liability of the employer at the time hearing loss is discovered. Under section 8(c)(13)(C), the employer's responsibility may be limited to any hearing loss proven to have occurred while the claimant was employed by him. The object of the amendment is to prevent double recovery at the expense of the last responsible employer. If, for example, a claimant is found to have a 10 percent hearing loss at the time of employment and thereafter suffers an additional 15 percent loss while working for his employer, the latter shall be responsible only for the 15 percent loss rather than the total hearing loss of 25 percent.

REHABILITATION

Consistent with one of the prime purposes of workers' compensation, i.e., to return the injured worker to the labor market, rehabilitation has been made mandatory. It is the Committee's view that a meaningful rehabilitation program should be available so that an injured employee is provided a reasonable plan which will enable him to obtain employment. Refusal of vocational rehabilitation without adequate reason, unless it is unnecessary or unavailable, will result in suspension of compensation payments.

WAGE EARNING CAPACITY

Section 8(h) was amended by deleting the phrase "as it may naturally extend into the future." The remainder of the section is unchanged. The deletion is intended to reduce speculation on the part of fact finders as to the extent of future loss of wage earning capacity. The result will be a realistic assessment of the claimant's current loss of wage earning capacity along with a concomitant predictability which will lead to ease of insurability.

SETTLEMENTS

Settlement procedure has been streamlined to eliminate complained of administrative delays. Where the parties agree to settle a claim, approval shall be granted within 30 days by the Deputy Commissioner. Unlike earlier law, claims for death benefits may also be settled along with claims which are under order of payment. In conjunction with this section, the computation provisions of § 14(j) have been eliminated as unnecessary, although lump sum settlements are still permitted under section 8(i).

DETERMINATION OF PAY

The amendment to section 10 places a cap of 5 percent on the annual adjustment to benefits received by those eligible for permanent total or death benefits. As with some of the other changes, this amendment too, will promote predicability and insurability and thereby reduce costs.

PRESUMPTIONS

The Committee adopted two amendments to the section 20 presumptions. The amendment to section 20(b) that notice has been given applies only where an agent of the employer designated in accordance with section 12 has not received such notice. The second amendment clarifies the purpose of the presumption in conformity with a recent Supreme Court case, *U.S. Industries/Federal Sheet Metal, Inc.* v. *Director, OWCP*, 102 S. Ct. 1312 (March 23, 1982) in that the mere existence of a physical impairment is insufficient to establish a claim under LHWCA.

PENALTIES FOR MISREPRESENTATION

Section 31 has been altered considerably to reflect concern over potential abuse of the benefit payment aspect of the Act. Testimony at the hearings as well as evidence gathered from those charged with administering the Act indicated that attempts have been made by some individuals to procure benefits through fraudulent means. Similarly, there is a significant body of evidence to indicate that employers and insurance carriers, on occasion, have denied benefits or substantially delayed their delivery through equally illegal methods. This section attempts to reduce the incentive to acquire or deny benefits through illegal means. Stringent penalties, including fines of up to $25,000 and jail terms not to exceed 3 years, have been introduced to replace the light level of punishment available under earlier law. The existence of these penalties should curb potential abuses of the system by all parties, resulting in the prompt disposition of all deserving claims.

MODIFICATIONS

Consistent with the change made in section 8(h) on the issue of wage earning capacity, the one year time limit for modification of awards has been eliminated. Although the time limit has been changed, the basis or grounds for seeking a modification remains as under current law. It is the Committee's intent that this amendment also will preclude any future proceeding for modification of a settled case in accordance with Section 22. This amendment promotes equity by permitting all parties to apply for modification of awards at any time after an award is entered. The one year limitation was unreasonably short in light of the long term effects of the major industrial injuries sustained by workers covered by the Act. As a consequence, administrative law judges felt compelled to award benefits for wage loss at the rate of 1 percent in cases where rejection of the claim would have required a request for modification within a year, whether or not such a new claim

was justified. The new approach is far more realistic, allowing claimants, for example, to apply for increased benefits for wage loss or for greater physical disability at a time when the full effects of an injury may manifest themselves. Requests for modification will no longer be necessary simply to keep the statute of limitations from running.

VII. Cost Estimate

Pursuant to Rule XXVI, paragraph 11(a), the Standing Rules of the Senate, the Committee submits the following cost estimate of the bill as reported:

U.S. Senate,
Committee on Labor and Human Resources,
Washington, D.C., May 25, 1982.

Dr. Alice M. Rivlin,
Director, Congressional Budget Office, Washington, D.C.

Dear Dr. Rivlin: Enclosed is a copy of S. 1182, the Longshoremen's and Harbor Workers' Compensation Act of 1982. This bill was reported favorably on May 25th by the Committee on Labor and Human Resources.

Please have your staff cost out the impact of this bill on federal Budget Outlays and Authority.

Time is of the essence and I would appreciate your response by Friday, June 4, 1982. If your staff has any questions, please call Rick Lawson or Chuck Carroll of my staff at 224–5546.

Your prompt attention and response to this request will be greatly appreciated.

With kindest regards.

Sincerely,

Don Nickles,
Chairman, Subcommittee on Labor.

Enclosure.

U.S. Congress,
Congressional Budget Office,
Washington, D.C., June 16, 1982.

Hon. Don Nickles,
Chairman, Subcommittee on Labor, Committee on Labor and Human Resources, U.S. Senate, Washington, D.C.

Dear Senator Nickles: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 1182, a bill to amend the Longshoremen's and Harbor Workers' Compensation Act.

Should the Committee so desire, we would be pleased to provide further details on the attached cost estimate.

Sincerely,

Alice M. Rivlin, *Director.*

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

June 16, 1982.

1. Bill number: S. 1182.
2. Bill title: A bill to amend the Longshoremen's and Harbor Workers' Compensation Act.

3. Bill status: As ordered reported by the Senate Committee on Labor and Human Resources, May 25, 1982.

4. Bill purpose: This bill would make several changes to the Longshoremen's and Harbor Workers' Compensation Act. The major provisions of the bill include placing a 5 percent cap on the annual escalation of benefits; restricting coverage to those occupations and industries directly involved in maritime employment; barring those physicians who provide false statements or charge excessive fees from delivering medical care under the act; offsetting program benefits by 50 percent of social security disability benefits; eliminating payment of death benefits where the death is unrelated to the compensable injury; increasing employer liability for second injuries from 104 to 208 weeks; and establishing a fund conservator and staff to safeguard the financial interests of the special fund.

5. Cost estimate:

[By fiscal year, in millions of dollars]

	1983	1984	1985	1986	1987
Required budget authority	(1)	−1	−2	−3	−5
Estimated outlays	(1)	−1	−2	−3	−5
Revenues	(1)	−1	−2	−3	−5
Net increases to deficit					

[1] Less than $500,000.

The savings of this bill fall within budget function 600.

6. Basis of estimate: The provision in this bill which would have the greatest budgetary impact is that restricting cost of living increases, which under current law rise at the same rate as the national average weekly wage, to 5 percent per year. Under the CBO baseline, the average weekly benefit amount for workers receiving benefits from this program is estimated to increase by about 7.5 percent per year. The benefit increase cap is estimated to save about $0.7 million, $1.5 million, $2.7 million, $4.0 million, and $5.4 million in fiscal years 1983 through 1987, respectively.

The bill provides for the hiring of a paid staff by the Conservator, but is silent on the number of persons to hire or their salary levels. In the absence of such information, it was assumed that a staff of fifteen would be hired—five attorneys, eight investigators and two secretaries. The current Federal salary for such occupations was provided by the Office of Personnel Management; these were then inflated by CBO's deflator for Federal pay increases. These costs were estimated to be $0.4 million, $0.5 million, $0.6 million, $0.6 million, and $0.6 million in fiscal years 1983 through 1987, respectively. Although the establishment of a Conservation Committee and a Conservator to safeguard the financial interests of the fund could prevent certain fraudulent cases from being approved and therefore could save money, there is no means of estimating the amount of savings.

Several of the other provisions could result in small savings; however, the Department of Labor has no information on the current program's beneficiary population, thus making it impossible to estimate the savings generated by the incorporation of such provisions into law.

This program is generally funded by assessments on private employers. The assessments are considered revenues to the Federal budget.

A reduction in spending would therefore generate a compensating reduction in Federal revenues. The deficit would remain unchanged. It was assumed that the bill will be effective October 1, 1983.

7. Estimate comparison: None.
8. Previous CBO estimate: None.
9. Estimate prepared by: Richard Hendrix.
10. Estimate approved:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

The Committee agrees with the CBO cost estimate.

VIII. REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the following statement of the regulatory impact of S. 1182 is made:

A. ESTIMATED NUMBER OF INDIVIDUALS AND BUSINESSES REGULATED AND THEIR GROUPS OR CLASSIFICATIONS

S. 1182 clarifies the jurisdiction of the current Act and assures that persons not presently covered by LHWCA are not brought into coverage by the amendments. Therefore, businesses and individuals not currently regulated by the Act will continue to be unregulated.

No estimate is available as to the exact number of businesses and individuals engaged in longshore, shipbuilding, shipbreaking, shiprepairing, and harbor worker activities. However, by specifically exempting certain categories of employees and employers from coverage, fewer individuals and businesses are under the jurisdiction of these amendments than currently are under LHWCA.

B. IMPACT OF THE ACT ON PERSONAL PRIVACY

This legislation has no impact on personal privacy. However, it does provide penalties if certain information is not filed as required. These required filings do not, however, mandate any loss of personal privacy.

C. ADDITIONAL PAPERWORK, TIME, AND COSTS

The Committee has no accurate way of forecasting the paperwork that will be associated with this legislation. As indicated, certain penalties are provided for failure to file reports. The reports, however, are themselves not new except for a quarterly report of the employee's earnings. This report is to be sent to the employer or carrier paying the claim and not to the Department of Labor.

D. ECONOMIC IMPACT

One major thrust of this legislation is to reduce the costs of providing benefits under the LHWCA. Provisions capping benefits at 5 percent, eliminating unrelated death benefits, clarifying jurisdiction, and others discussed in this report will lessen costs currently associated with this program. The exact amount of savings associated with this bill are not known.

IX. Tabulation of Votes Cast in Committee

The motion favorably to report the bill to the Senate was passed unanimously by voice of the Committee.

X. Section-by-Section Analysis of S. 1182

Section 2(a) amends Section 2(3) of the Act to exclude specifically from the definition certain occupations such as office workers, salesmen, deliverymen and draftsmen, shipbuilders and repairmen of certain vessels under 16 hundred tons gross, pleasure boats under 65 feet in length, barges under 900 light displacement tons. These workers are covered by State Worker Compensation programs.

Section 2(b) amends Section 2(4) of the Act to specifically exclude from the definition of employer certain employers including marinas, museums, restaurants and clubs, and employers building, repairing or dismantling certain commercial barges and small vessels, and pleasure boats.

Section 2(c) amends Section 2(13) of the Act to confirm past practice and congressional intent and to reaffirm the previously settled rule that fringe benefits are excluded from the definition of "wages."

Section 3(a) amends Section 3(a)(1) of the Act to conform to the jurisdictional limitations and exclusions of Sections 2(a) and 2(b).

Section 3(b) amends Section 3 of the Act by adding a new subsection (c) to provide that recoveries under other workers' compensation laws of the Jones Act for injuries, disabilities and deaths compensable under the LHWCA shall be credited against any compensation paid under this Act.

Section 4(a) amends Section 5(a) of the Act by adding language assuring that an employer's liability for compensation or benefits under the Act shall be determined in accordance with its provisions and, if such Longshore benefits are awarded, shall be the exclusive remedy of any liability under any other workers' compensation law and the Jones Act.

Section 4(b) amends the third sentence of Section 5(b) of the Act to bar negligence actions against certain employers in their capacity as a vessel. The amendment provides that no person covered under the Act who is employed to provide shipbuilding, repairing, or breaking services may bring a negligence action against his employer in any capacity including as the vessel's owner, owner pro hac vice, operator, or charterer. The amendment also bars such suits against employees of such employer.

Section 4(c) amends Section 5 of the Act by adding a new subsection (c) which permits only employers engaged in operations on the Outer Continental Shelf to enter into valid indemnity agreements with third persons engaged in those same operations and only as to those operations.

Section 5(a) amends Section 6(b)(1) of the Act by adding language to assure that benefits for death caused by compensable injury and compensation for permanent and total disability are subject to identical maximum limits.

Section 5(b)(1) amends Section 6 of the Act by deleting subsection (c) and assuring that the maximum rate of compensation payable to a non-appropriated fund employee is subject to the same maximum

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limits applicable to any other person entitled to compensation under this Act.

Section 5(b)(2) amends redesignated Section 6(c) of the Act to clarify its reference to subsection 6(b)(3).

Section 6(a) amends Section 7(b) of the Act by inserting language authorizing the Secretary to order a change of physicians whenever the treating physician's charges exceed local prevailing rates.

Section 6(b) amends Section 7(c) of the Act to direct the Secretary to identify those physicians ineligible to provide care and receive payments under this Act.

Section 6(c) amends Section 7(d) of the Act by defining the method by which an employee may select his treating physician.

Section 6(c) further amends Section 7(d) by authorizing either the deputy commissioner or an administrative law judge to suspend payment of compensation benefits otherwise payable to employees who unreasonably refuse to accept medical or surgical treatment or to submit to an examination by a consulting physician selected by the employer.

Section 6(d) further amends Section 7 of the Act by adding a new subsection (j) directing the Secretary to adopt rules and procedures necessary to carry out the section.

Section 7(a) amends Section 8(a) of the Act by creating an offset against liability under this Act equaling fifty percent of the amounts for which the employee is eligible under Title II of the Social Security Act.

Section 7(b) amends Section 8(c)(13) to assure that employers against whom hearing loss claims are made will not be liable for previous hearing loss.

Section 7(c) amends Section 8(c)(20) of the Act by increasing the maximum amount awardable for serious disfigurement from $3,500 to $7,500.

Section 7(d) amends Section 8(c)(21) of the Act by repealing language permitting deputy commissioners to reconsider the extent of disability and by limiting the method for modifying or reconsidering the degree of disability to that provided in Section 22.

Section 7(e) amends Section 8(d) of the Act by repealing subsection (3) and by precluding any liability under the Act for any death occurring on or after the date of enactment which results from causes other than compensable injury.

Section 7(f)(1) amends Section 8(f)(1) of the Act and lessens the financial burdens of the Special Fund by lengthening from two years to four years the period of the employer's payment responsibility.

Section 7(f)(2) amends Section 8(f) of the Act by adding a new subsection (3) assuring that the persons responsible for defending the interests of the Special Fund receive notice of all claims for Section 8(f) apportionment in advance of consideration of that claim by an administrative law judge.

Section 7(g) amends Section 8(g) of the Act by postponing entry of an award for permanent disability during the pendency of a rehabilitation program.

Section 7(g) amends Section 8(h) of the Act by eliminating the phrase "including the effect of disability as it may naturally extend

into the future" and thereby reducing speculation as to an employee's potential future loss of wage earning capacity.

Section 7(g) amends Section 8(i) of the Act by specifically authorizing the parties to any claim for compensation, death or medical benefits to enter into a settlement agreement at any time upon proper approval which completely discharges the employer and carrier from all further liability.

Section 7(h) further amends Section 8 of the Act by adding a new subsection (j) authorizing employers to notify claimants of their obligation to report all earnings and permitting the termination of payments to those persons found by the deputy commissioner to have failed to do so.

Section 8(a) amends Section 9 of the Act by deleting that portion of the sentence preceding the first colon and by precluding any liability under this Act for any death occurring on or after the date of enactment which results from causes other than compensable injury.

Section 8(b) amends Section 9(a) of the Act by increasing the maximum funeral expense reimbursement from $1,000 to $3,000.

Section 8(c) amends Section 9(e) of the Act in a manner assuring that the maximum weekly death benefit equals the amount which would have been payable to the deceased worker for permanent and total disability had he lived and further provides that the minimum weekly survivors' death benefit equals the lesser of the deceased worker's actual weekly wages or 50 percent of the applicable national average weekly wage.

Section 9 amends Section 10(f) of the Act by limiting all future annual increases in amounts payable as adjustments for permanent total disability and death caused by a compensable injury to a maximum of 5 percent per annum.

Section 10(a) amends Section 12(a) of the Act to require that notice of injury or death be given to both the deputy commissioner and the employer or his designated representative within 30 days of the occurrence, or within 30 days of the time when the employee becomes or should reasonably become aware by reason of medical advice of a relationship between the injury or death and the employment.

Section 10(b) amends Section 12(d) of the Act to conform to the "notice" changes affected by Section 10(a) of the bill.

Section 11(a) amends Section 14(b) of the Act to conform to the "notice" changes affected by Sections 10(a) and 10(b) of the bill.

Section 11(b) amends Section 14 of the Act by repealing those provisions authorizing the discharge of all or part of the employer's liability for compensation by payment of a lump-sum computed at a 4 percent discount rate.

Section 12(a) amends Section 20(b) of the Act to qualify the presumption of timely notice.

Section 12(b) further amends Section 20 of the Act by adding clarifying language that the mere existence of a physical impairment will be insufficient to establish a claim under the Act.

Section 13 amends Section 21(b) of the Act by adding a new subparagraph (5) permitting temporary expansion of the Benefits Review Board.

Section 14 amends Section 22 of the Act by removing existing time limitations on requests for modification and review of compensation cases arising out of injuries occurring on or after the date of enactment which have not been settled.

Section 15 amends Section 28 of the Act to clarify the instances in which penalties for improper conduct may be imposed.

Section 16(a) and (b) amend Section 30(a) of the Act by requiring employers to maintain records of all properly reported injuries but to report to the deputy commissioner only those injuries which cause loss of one or more shifts of work.

Section 16(c) amends Section 30(e) of the Act by deleting the requirement that civil penalties be imposed in cases of mistaken failure or refusal to submit injury reports and, by increasing the civil penalties for willful failure or refusal to a maximum of $25,000.

Section 17 amends Section 31 by increasing the penal provisions and fines for making false statements or representations for the purpose of obtaining a benefit or payment, or, in the instance of an employer or carrier, making such false statements or representations for the purpose of denying or terminating benefits. The amendments also list those persons who may and may not prosecute or defend claims under the Act.

Section 18 amends Section 32(a)(2) of the Act to allow the Secretary to take into account the financial condition, the employer's previous record of payment, and other relevant factors in establishing collateral requirements for employers seeking authorization to make direct payment of compensation under the Act.

Section 19(a) amends Section 33(b) of the Act to clarify the period within which the employee must commence third-party litigation or have the right to bring such action assigned by law to the employer and by providing that the right of action returns to the employee if not asserted by the employer within a reasonable period.

Section 19(b) amends Section 33(f) of the Act by adding a new subsection (2) establishing clear procedures for the distribution of proceeds from third-party actions brought by persons entitled to compensation or other benefits under the Act and by providing that all amounts paid and determined payable by the employer shall be a first lien on any proceeds obtained by judgment or settlement.

Section 19(c) amends Section 33(g) of the Act to assure that all entitlement to compensation and other benefits otherwise available under this Act is forfeited whenever a third-party action is resolved without the employer's formal written approval.

Section 19(c) further amends Section 33(g) of the Act by adding a new subsection (3) providing that all payments made by the Special Fund to or on behalf of a person entitled to compensation or other benefits under this Act shall be a lien on the proceeds of any third-party action subordinate only to the lien of the employer or carrier.

Section 20 reinstates former Section 43 of the Act and requires the Secretary of Labor to report to Congress annually on the administration of the Act and on the status of the funds established in Sections 44 and 45.

Section 21 amends Section 45 of the Act to establish a conservation system and to create a five-member committee responsible to protect the interests of the Special Fund and to appoint a Fund Conservator

authorized to participate as fully as any other party in all proceedings involving claims to any amounts from the Fund.

Section 22 and 23 repeal out-dated Sections 46 and 47 of the Act.

Section 24 amends Section 49 of the Act to permit the discharge or refusal to hire any person who has filed a fraudulent claim to the Act's benefits.

Section 25 provides for application of the amendments only to injuries or deaths occurring after the effective date of enactment with the exception of deaths due to causes unrelated to the work activity, for which liability is eliminated regardless of the date of injury or death. The Section also provides that the amendment in Section 14 of the bill pertaining to the modifications under Section 22 of the Act shall not apply to payments of compensation under the Black Lung Benefits Act (30 U.S.C. § 901 et seq.).

XI. Changes In Existing Law

In compliance with rule XXVI, paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Longshoremen's and Harbor Workers' Compensation Act

DEFINITIONS

Sec. 2. When used in this Act—

(1) The term "person" means individual, partnership, corporation, or association.

(2) The term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.

[(3) The term "employee" means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker, but such term does not include a master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net.]

(3) The term "employee" means any person directly engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker, but such term does not include (A) any ship repairman, shipbuilder, or shipbreaker engaged by employers described in Sec. 2(4)(b)(4), (B) employees exclusively performing office clerical, secretarial, security, or data processing work, (C) club, camp, restaurant, museum, retail outlet, and marina personnel, (D) personnel of suppliers, transporters, or vendors temporarily doing business on the premises of employers de-

scribed in Sec. 2(4)(a), (E) aquaculture workers, (F) any person engaged in operating an independently or cooperatively owned grain elevator and who is not engaged in the loading or unloading of a vessel, and (G) any person employed to build or repair any recreational vessel under 65 feet in length; (H) a master or member of a crew of any vessel; or (I) any person engaged by a master to load or unload or repair any small vessel under 18 tons net; if employees described in clauses (A) through (G) are subject to coverage under a State workers' compensation law.

[(4) The term "employer" means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel).]

(4)(a) The term "employer" means an employer any of whose employees are directly employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, [or] building or breaking a vessel).

(b) The term employer does not include:

i. Clubs, camps, restaurants, museums, retail outlets, or marinas;

ii. Aquaculture farms;

iii. Employers or operations of employers who otherwise would be described by subparagraph (a) of this paragraph: (I) solely and exclusively because they are in the business of building, repairing, or dismantling (aa) commercial barges under 900 lightship displacement tons used or intended for use on the inland water ways of the continental United States as defined in section 311(a)(16) of the Federal Water Pollution Control Act (33 U.S.C. 1321(a)(16)) but no other commercial barge which is 900 lightship displacement tons or more; (bb) commercial tugboats, towboats, crew boats, supply boats, or fishing vessels under sixteen hundred tons gross or more; or (cc) any recreational vessel under 65 feet in length but no other vessel which is 65 feet in length or more, while upon any pier, wharf, building way, marine railway, graving dock, shop, or any other facility or area over land customarily used in ship repairing, shipbuilding or shipbreaking; and (II) if the operations of employers described in subdivision (I) do not receive federal maritime subsidies.

(5) The term "carrier" means any person or fund authorized under section 32 to insure this Act and includes self-insurers.

(6) The term "Secretary" means the Secretary of Labor.

(7) The term "deputy commissioner" means the deputy commissioner having jurisdiction in respect of any injury or death.

(8) The term "State" includes a Territory and the District of Columbia.

(9) The term "United States" when used in a geographical sense means the several States and Territories and the District of Columbia, including the territorial waters thereof.

(10) "Disability" means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment.

(11) "Death" as a basis for a right to compensation means only death resulting from an injury.

(12) "Compensation" means the money allowance payable to an employee or to his dependents as provided for in this Act, and includes funeral benefits provided therein.

(13) *The term* "[W]*wages*" means the money rate at which the service rendered *by an employee* is [recompensed] *compensated by an employer* under the contract of hiring in force at the time of the injury, including the reasonable value of [board, rent, housing, lodging or similar advantage received from the employer, and gratuities received in the course of employment from others than the employer] *any advantage which is received from the employer and included for purposes of any withholding of tax under subtitle C of the Internal Revenue Code of 1954 (relating to employment taxes). The term "wages" does not include fringe benefits, including but not limited to employer payments for or contributions to a retirement, pension, health and welfare, life insurance, training, social security or other employee or dependent benefit fund or trust for the employee's or dependent's benefit, or any other employee's dependent entitlement.*

(14) "Child shall include a posthumous child, a child legally adopted prior to the injury of the employee, a child in relation to whom the deceased employee stood in loco parentis for at least one year prior to the time of injury, and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent on him. "Grandchild" means a child as above defined of a child as above defined. "Brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee. "Child," "grandchild," "brother" and "sister" include only a person who is under eighteen years of age, or who, though eighteen years of age or over, is (1) wholly dependent upon the employee and incapable of self-support by reason of mental or physical disability, or (2) a student as defined in paragraph (19) of this section.

(15) The term "parent" includes step-parents and parents by adoption, parents-in-law, and any person who for more than three years prior to the death of the deceased employee stood in the place of a parent to him, if dependent on the injured employee.

(16) The terms, "widow or widower" includes only the decedent's wife or husband living with a dependent for support upon him or her at the time of his or her death; or living apart for justifiable cause or by reason of his or her desertion at such time.

(17) The term "adoption" or "adopted" means legal adoption prior to the time of the injury.

(18) The term "student" means a person regularly pursuing a full-time course of study or training at an institution which is—

(A) a school or college or university operated or directly supported by the United States, or by any State or local government or political subdivision thereof,

(B) a school or college or university which has been accredited by a State or by a State recognized or nationally recognized accrediting agency or body,

(C) a school or college or university not so accredited but whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited, or

(D) an additional type of educational or training institution as defined by the Secretary,

but not after he reaches the age of twenty-three or has completed four years of education beyond the high school level, except that, where his twenty-third birthday occurs during a semester or other enrollment period, he shall continue to be considered a student until the end of such semester or other enrollment period. A child shall not be deemed to have ceased to be a student during any interim between school years if the interim does not exceed five months and if he shows to the satisfaction of the Secretary that he has a bona fide intention of continuing to pursue a full-time course of education or training during the semester or other enrollment period immediately following the interim or during periods of reasonable duration during which, in the judgment of the Secretary, he is prevented by factors beyond his control from pursuing his education. A child shall not be deemed to be a student under this Act during a period of service in the Armed Forces of the United States.

(19) The term "national average weekly wage" means the national average weekly earnings of production or nonsupervisory workers on private nonagricultural payrolls.

(20) The term "Board" shall mean the Benefits Review Board.

(21) [The] *Unless the context requires otherwise, the* term "vessel" means any vessel upon which or in connection with which any person entitled to benefits under this Act suffers injury or death arising out of or in the course of his employment, and said vessel's owner pro hac vice, agent, operator, charter or bare boat charterer, master, officer, or crew member.

(22) The singular includes the plural and the masculine includes the feminine and neuter.

COVERAGE

[Sec. 3.(a) Compensation shall be payable under this Act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area, customarily used by an employer in loading, unloading, repairing, or building a vessel). No compensation shall be payable in respect of the disability or death of—

(1) a master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net; or

(2) An officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof.

(b) No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another.]

Sec. 3 (a) Compensation shall be payable under this Act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by the employer in loading, unloading, repairing, or building a vessel). No compensation shall be payable in respect of the disability or death of—

(1) Any employee described in section 2(3)(A) through (I) of this Act; or

(2) An officer or employee of the United States or any agency thereof or any State or foreign government, or of any political subdivision thereof.

(b) No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another.

(c) Notwithstanding any other provision of law, any amounts paid by any employer for the same injury, disability, or death for which benefits are claimed under this Act pursuant to any other workers' compensation law or section 20 of the Act of March 4, 1915, (38 Stat. 1185, chapter 153; 46 U.S.C. 688) (relating to recovery for injury to or death of seamen) shall be credited against any liability imposed by this Act.

LIABILITY FOR COMPENSATION

SEC. 4. (a) Every employer shall be liable for and shall secure the payment to his employees of the compensation payable under sections 7, 8, and 9. In the case of an employer who is a subcontractor, the contractor shall be liable for and shall secure the payment of such compensation to the employees of the subcontractor unless the subcontractor has secured such payment.

(b) Compensation shall be payable irrespective of fault as a cause for the injury.

EXCLUSIVENESS OF REMEDY AND THIRD-PARTY LIABILITY

SEC. 5. (a) The liability of an employer prescribed in section 4 shall be exclusive and in place of all other liability *including any liability imposed by or arising out of any other workers' compensation law or section 20 of the Act of March 4, 1915 (38 Stat. 1185, chapter 153; 46 U.S.C. 688)* of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone othherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this Act, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under the Act, or to maintain an action at law or in admiralty for damages on

account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of his employment, or that the injury was due to the contributory negligence of the employee.

(b) In the event of injury to a person covered under this Act caused by the negligence of a vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel as a third party in accordance with the provisions of section 33 of this Act, and the employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void. If such person was employed by the vessel to provide stevedoring services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing stevedoring services to the vessel. If such person was employed [by the vessel] to provide ship building, [or repair services, no action shall be permitted if the injury was caused by the negligence of persons engaged in providing shipbuilding or repair services to the vessel] *repairing, or breaking services and such person's employer was the owner, owner pro hac vice, agent, operator, or charterer of the vessel, no such action shall be permitted, in whole or in part or directly or indirectly, against the injured person's employer (in any capacity including as the vessel's owner, owner pro hac vice, agent, operator, or charterer), or against the employees of the employer.* The liability of the vessel under this subsection shall not be based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred. The remedy provided in this subsection shall be exclusive of all other remedies against the vessel except remedies available under this Act.

(c) In the event that the negligence of a third party causes injury to a person entitled to receive benefits under this chapter by virtue of section 4 of the Outer Continental Shelf Lands Act (43 U.S.C. 1333), then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such third party in accordance with the provisions of section 33 of this Act. Nothing contained in this chapter, or in any otherwise applicable State law, shall preclude the enforcement according to its terms of any written agreement under which the employer has agreed to indemnify such third party in whole or in part with respect to such action.

TIME FOR COMMENCEMENT OF COMPENSATION MAXIMUM AND MINIMUM COMPENSATION

SEC. 6. (a) No compensation shall be allowed for the first three days of the disability, except the benefits provided for in section 7: *Provided, however,* that in case the injury results in disability of more than fourteen days, the compensation shall be allowed from the date of the disability.

(b)(1) [Except as provided in subsection (c),] [c]Compensation for disability *or death* shall not exceed *an amount equal to 200 per centum of the applicable national average weekly wage, as determined by the Secretary under subsection (b)(3).* [the following percentages

of the applicable national average weekly wage as determined by the Secretary under paragraph (3):

(A) 125 per centum or $167, whichever is greater, during the period ending September 30. 1973.

(B) 150 per centum during the period beginning October 1, 1973, and ending September 30, 1974.

(C) 175 per centum during the period beginning October 1, 1974, and ending September 30, 1975.

(D) 200 per centum beginning October 1, 1975.]

(2) Compensation for total disability shall not be less than 50 per centum of the applicable national average weekly wage determined by the Secretary under paragraph (3), except that if the employee's average weekly wages as computed under section 10 are less than 50 per centum of such national average weekly wage, he shall receive his average weekly wages as compensation for total disability.

(3) As soon as practicable after June 30 of each year, and in any event prior to October 1 of such year, the Secretary shall determine the national average weekly wage for the three consecutive calendar quarters ending June 30. Such determination shall be the applicable national average weekly wage for the period beginning with October 1 of that year and ending with September 30 of the next year. The initial determination under this paragraph shall be made as soon as practicable after the enactment of this subsection.

[(c) The maximum rate of compensation for a nonappropriated fund instrumentality employee shall be equal to 66⅔ per centum of the maximum rate of basic pay established for a Federal employee in grade GS–12 by section 5332 of title 5, United States Code, and the minimum rate of compensation for such an employee shall be equal to 66⅔ per centum of the minimum rate of basic pay established for a Federal employee in grade GS–2 by such section.]

[(d)] *(c)* Determinations [under this subsection] *under subsection (b)(3)* with respect to a period shall apply to employees or survivors currently receiving compensation for permanent total disability or death benefits during such period, as well as those newly awarded compensation during such period.

MEDICAL SERVICES AND SUPPLIES

SEC. 7. (a) The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of the injury or the process or recovery may require.

(b) The employee shall have the right to choose an attending physician authorized by the Secretary to provide medical care under this Act as hereinafter provided. If, due to the nature of the injury, the employee is unable to select his physician and the nature of the injury requires immediate medical treatment and care, the employer shall select a physician for him. The Secretary shall actively supervise the medical care rendered to injured employees, shall require periodic reports as to the medical care being rendered to injured employees, shall have authority to determine the necessity, character, and sufficiency of any medical aid furnished or to be furnished, and

may, on his own initiative or at the request of the employer, order a change of physicians or hospitals when in his judgment such change desirable or necessary in the interest of the employee *or where the charges exceed those prevailing within the community for the same or similar services.* Change of physicians at the request of employees shall be permitted in accordance with regulations of the Secretary.

(c)(*1*)(*A*) The Secretary [may designate the] *shall annually prepare a list of* physicians *in each compensation district* who are *not* authorized to render medical care under [the] *this* Act. The names of physicians [so designated in the community] *contained on the list required under this subparagraph* shall be made available to employees *and employers in each compensation district* through posting or in such [other] form as the Secretary may prescribe.

(*B*) *The Secretary may refuse to authorize any physician who, in accordance with the provisions of subsection* (*j*)(*1*) *of this section, and shall refuse to authorize any physician who, in accordance with the provisions of subsection* (*j*)(*2*) *of this section, has been found ineligible to receive payments under this Act. A Physician not authorized under this Act shall not be entitled to reimbursement for any service, appliance, or supply or to recover any amount with respect to any such service, appliance, or supply from any employee.*

(*2*) *Whenever the employer or carrier acquires knowledge of the employee's injury, through written notice or otherwise as prescribed by the Act, the employer or carrier shall forthwith authorize medical treatment and care from a physician selected by an employee pursuant to subsection* (*b*). *An employee may not select a physician who is on the list required by paragraph* (*1*) *of this subsection. An employee may not change physicians after his initial choice unless the employer, carrier, or deputy commissioner has given prior consent for such change. Such consent shall be given in cases where an employee's initial choice was not of a specialist whose services are necessary for and appropriate to the proper care and treatment of the compensable injury or disease. In all other cases, consent may be given upon a showing of good cause for change.*

(d) An employee shall not be entitled to recover any amount expended by him for medical or other treatment or services unless he shall have [requested the employer to furnish such treatment or services, or to authorize provision of medical or surgical services by the physician selected by the employee, and the employer shall have refused or neglected to do so,] *complied with subsections* (*b*) *and* (*c*) *and the applicable regulations or unless the employer shall have refused or neglected to furnish such services, or* unless the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide or authorize [the] same: nor shall any claim for medical or surgical treatment be valid and enforceable[, as] against such employer, unless within [ten] *twenty-one* days following the first treatment the physician giving such treatment furnishes to the employer and the [Secretary] *deputy commissioner* a report of such injury and treatment on a form prescribed by the Secretary. The Secretary may[, however,] excuse the failure to furnish such report within [ten days] *the twenty-one day period* whenever he finds it to be in the interest of justice to do so. [, and he] *The Secretary* may,

upon application by a party in interest, make an award for the reasonable value of such medical or surgical treatment so obtained by the employee. If at any time the employee unreasonably refuses to submit to medical or surgical treatment, or to an examination by a physician selected by the employer, the Secretary *or Administrative Law Judge* may, by order, suspend the payment of further compensation during such time as such refusal continues, and no compensation shall be paid at any time during the period of such suspension, unless the circumstances justified the refusal.

(e) In the event that medical questions are raised by any case, the Secretary shall have the power to cause the employee to be examined by a physician employed or selected by the Secretary and to obtain from such physician a report containing his estimate of the employee's physical impairment and such other information as may be appropriate. Any party who is dissatisfied with such report may request a review or reexamination of the employee by one or more different physicians employed or selected by the Secretary. The Secretary shall order such review or reexamination unless he finds that it is clearly unwarranted. Such review or reexamination shall be completed within two weeks from the date ordered unless the Secretary finds that because of extraordinary circumstances a longer period is required. The Secretary shall have the power in his discretion to charge the cost of examination or review under this subsection to the employer, if he is a self-insurer, or to the insurance company which is carrying the risk, in appropriate cases, or to the special fund in section 44.

(f) An employee shall submit to a physicial examination under subsection (e) at such place as the Secretary may require. The place, or places shall be designated by the Secretary and shall be reasonably convenient for the employee. No physician selected by the employer, carrier, or employee shall be present at or participate in any manner in such examination, nor shall conclusions of such physicians as to the nature or extent of impairment or the cause of impairment be available to the examining physician unless otherwise ordered, for good cause, by the Secretary. Such employer or carrier shall, upon request, be entitled to have the employee examined immediately thereafter and upon the same premises by a qualified physician or physicians in the presence of such physician as the employee may select, if any. Proceedings shall be suspended and no compensation shall be payable for any period during which the employee may refuse to submit to examination.

(g) All fees and other charges for medical examinations, treatment or service shall be limited to such charges as prevail in the community for such treatment, and shall be subject to regulation by the Secretary. The Secretary shall issue regulations limiting the nature and extent of medical expenses chargeable against the employer without authorization by the employer or the Secretary.

(h) The liability of an employer for medical treatment as herein provided shall not be affected by the fact that his employee was injured through the fault or negligence of a third party not in the same employ, or that suit has been brought against such third party. The employer shall, however, have a cause of action against such third party to recover any amounts paid by him for such medical treatment in like manner as provided in section 33(b) of this Act.

(i) Unless the parties to the claim agree, the Secretary shall not employ or select any physician for the purpose of making examinations or reviews under subsection (e) of this section, who, during such employment, or during the period of two years prior to such employment has been employed by or accepted or participated in any fee relating to a workmen's compensation claim from any insurance carrier or any self-insurer.

(j) (1) Notwithstanding any other provisions of this Act, no liability shall arise under this Act for a service appliance, or supply furnished by an individual or entity where the Secretary determines under this subsection that a provider—

(A) has knowingly and willfully made, or caused to be made, a false statement or representation of a material fact in connection with any services provided under this Act;

(B) has submitted, or caused to be submitted, a bill or request for payment under this Act containing a charge which the Secretary finds to be substantially in excess of the charge for the service, appliance, or supply prevailing within the community unless the Secretary finds there is good cause for the bill or request containing the charge; or

(C) has furnished a service, appliance, or supply which is determined by the Secretary to be substantially in excess of the need of the recipient thereof or to be of a quality which fails to meet professionally recognized standards.

(2) Liability shall not arise for a service, appliance, or supply furnished by a provider—

(A) indicted or convicted under a criminal statute (without regard to pending appeal thereof) for fraudulent activities or (as determined by regulation of the Secretary) related activities, in connection with a program under which payments are made to providers for similar services, appliances, or supplies; or

(B) otherwise excluded from participation in a program under which payments are made to providers for similar services, appliances or supplies.

(3) A provider of a service, appliance, or supply shall provide to the Secretary such information and certification as the Secretary may require to assure that this subsection is enforced.

(4) (A) A determination made by the Secretary under paragraph (1) and (2) shall be effective—

(i) in connection with any request for payment by a provider, upon notice consistent with paragraph (5); or

(ii) in connection with a request for payment by anyone claiming benefits undert his Act, only with respect to payment of expenses incurred after receipt of notice of the determination by such person.

(B) A determination shall remain in effect until the Secretary finds and gives notice to the public that the basis for the determination has been removed, and that there is reasonable assurance that the basis for the determination will not reoccur.

(5) The Secretary may make rules and regulations and establish procedures which are necessary or appropriate to carry out this subsection including notice and opportunity for a hearing to the provider of a service, appliance, or supply, subject to a determination made by the Secretary under paragraphs (1) and (2) of this subsection.

COMPENSATION FOR DISABILITY

SEC. 8. Compensation for disability shall be paid to the employee as follows:

(a) Permanent total disability: In case of total disability [adjudged] *determined* to be permanent, 66⅔ per centum of the average weekly wages *of the employee* shall be paid to the employee during the continuance of [such total] *the* disability[.], *except that compensation paid to the injured employee shall be subject to section 6(b)(1) and shall be reduced by 50 per centum of the amount of old-age insurance benefits to which the employee is entitled under title II of the Social Security Act.* Loss of both hands, [or] both arms, [or] both feet, [or] both legs, [or] both eyes, or [of] any [two thereof] *combination of two such body parts shall*[, in the absence of conclusive proof to the contrary,] constitute permanent total disability *in the absence of conclusive proof to the contrary.* In all other cases, permanent total disability shall be determined in accordance with the facts.

(b) Temporary total disability: In case of disability total in character but temporary in quality 66⅔ per centum of the average weekly wages shall be paid to the employee during the continuance thereof.

(c) Permanent partial disability: In case of disability partial in character but permanent in quality the compensation shall be 66⅔ per centum of the average weekly wages, which shall be in addition to compensation for temporary total disability or temporary partial disability paid in accordance with subdivision (b) or subdivision (e) of this section respectively and shall be paid to the employee, as follows:

(1) Arm lost, three hundred and twelve weeks' compensation.
(2) Leg lost, two hundred and eighty-eight weeks' compensation.
(3) Hand lost, two hundred and forty-four weeks' compensation.
(4) Foot lost, two hundred and five weeks' compensation.
(5) Eye lost, one hundred and sixty weeks' compensation.
(6) Thumb lost, seventy-five weeks' compensation.
(7) First finger lost, forty-six weeks' compensation.
(8) Great toe lost, thirty-eight weeks' compensation.
(9) Second finger lost, thirty weeks' compensation.
(10) Third finger lost, twenty-five weeks' compensation.
(11) Toe other than great toe lost, sixteen weeks' compensation.
(12) Fourth finger lost, fifteen weeks' compensation.
(13) Loss of hearing:

(*A*) Compensation for loss of hearing [of] *in* one ear, fifty-two weeks.

(*B*) Compensation for loss of hearing [of] *in* both ears, two hundred weeks.

(*C*) *An employer shall be liable to the employee only for the loss of hearing attributable to employment by the employer.*

(*D*) *An audiogram shall be conclusive evidence of the amount of hearing loss sustained as of the date thereof, unless contrary audiograms made at that time are produced.*

(*E*) *Within ninety days of the date of enactment of this Act, the Secretary shall promulgate regulations to define the term "loss of hearing" in accordance with the American Medical Association Guides for the Evaluation of Permanent Impairment.*

(14) Phalanges: Compensation for loss of more than one phalange of a digit shall be the same as for loss of the entire digit. Compensation for loss of the first phalange shall be one-half of the compensation or loss of the entire digit.

(15) Amputated arm or leg: Compensation for an arm or a leg, if amputated at or above the elbow or the knee, shall be the same as for a loss of the arm or leg; but, if amputated between the elbow and the wrist or the knee and the ankle, shall be the same as for loss of a hand or foot.

(16) Binocular vision or per centum of vision: Compensation for loss of binocular vision or for 80 per centum or more of the vision of an eye shall be the same as for loss of the eye.

(17) Two or more digits: Compensation for loss of two or more digits or one or more phalanges of two or more digits, of a hand or foot may be proportioned to the loss of use of the hand or foot occasioned thereby, but shall not exceed the compensation for loss of a hand or foot.

(18) Total loss of use: Compensation for permanent total loss of use of a member shall be the same as for loss of the member.

(19) Partial loss or partial loss of use: Compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member.

(20) Disfigurement: Proper and equitable compensation not to exceed [$3,500] *$7,500* shall be awarded for serious disfigurement of the face, head, or neck, or of other normally exposed areas likely to handicap the employee in securing or maintaining employment.

(21) Other cases: In all other cases in this class of disability, the compensation shall be 66⅔ per centum of the difference between [his] *the* average weekly wages *of the employee* and [his] *the employee's* wage-earning capacity thereafter in the same employment or otherwise [.] payable during the continuance of [such] *the* partial disability. [, but subject to reconsideration of the degree of such impairment by the deputy commissioner on his own motion or upon application of any party in interest.]

(22) In any case in which there shall be a loss of, or loss of use of more than one member of parts of more than one member set forth in paragraphs (1) to (19) of this subdivision, not amounting to permanent total disability, the award of compensation shall be for the loss of, or loss of use of, each such member or part thereof, which awards shall run consecutively, except that where the injury affects only two or more digits of the same hand or foot, paragraph (17) of this subdivision shall apply.

(d)(1) If an employee who is receiving compensation for permanent partial disability pursuant to section 8(c)(1)–(20) dies from causes other than the injury, the total amount of the award unpaid at this time of death shall be payable to or for the benefit of his survivors, as follows:

(A) if the employee is survived only by a widow or widower, such unpaid amount of the award shall be payable to such widow or widower,

(B) if the employee is survived only by a child or children, such unpaid amount of the award shall be paid to such child or children in equal shares,

(C) if the employee is survived by a widow or widower and a child or children, such unpaid amount of the award shall be payable to such survivors in equal shares,

(D) if there be no widow or widower and no surviving child or children, such unpaid amount of the award shall be paid to the survivors specified in section (d) (other than a wife, husband, or child); and the amount to be paid each such survivor shall be determined by multiplying such unpaid amount of the award by the appropriate percentage specified in section 9(d), but if the aggregate amount to which all such survivors are entitled, as so determined, is less than such unpaid amount of the award, the excess amount shall be divided among such survivors pro rata according to the amount otherwise payable to each under this subparagraph.

(2) Notwithstanding any other limitation in section 9, the total amount of any award for permanent partial disability pursuant to section 8(c)(1)–(20) unpaid at time of death shall be payable in full in the appropriate distribution.

[(3) If an employee who was receiving compensation for permanent partial disability pursuant to section 8(c)(21) dies from causes other than the injury, his survivors shall receive death benefits as provided in section 9(b)–(g), except that the percentage figures therein shall be applied to the weekly compensation payable to the employee at the time of his death multiplied by 1.5, rather than to his average weekly wages.]

[(4)] *(3)* An award for disability may be made after the death of the injured employee. Except where compensation is payable under section 8(c)(21), if there be no survivors as prescribed in this section, then the compensation payable under the subsection shall be paid to the special fund established under section 44(a) of this Act.

(e) Temporary partial disability: In case of temporary partial disability resulting in decrease of earning capacity the compensation shall be two-thirds of the difference between the injured employee's average weekly wages before the injury and his wage-earning capacity after the injury in the same or another employment, to be paid during the continuance of such disability, but shall not be paid for a period exceeding five years.

(f) Injury increasing disability: (1) In any case in which an employee having an existing permanent partial disability suffers injury, the employer shall provide compensation for such disability as is found to be attributable to that injury based upon the average weekly wages of the employee at the time of the injury. If following an injury falling within the provisions of section 8(c)(1)–(20), the employee is totally and permanently disabled, and the disability is found not to be due solely to that injury, the employer shall provide compensation for the applicable prescribed period of weeks provided for in that section for the subsequent injury, or for [one hundred and four] *two hundred and eight* weeks, whichever is the greater. In all other cases of total permanent disability or of death, found not to be due solely to that injury, of an employee having an existing permanent partial disability, the employer shall provide in addition to compensation under paragraphs (b) and (e) of this section, compensation payments or death benefits for [one hundred and four] *two hundred and eight* weeks

only. If following an injury falling within the provisions of 8(c) (1)–(20), the employee has a permanent partial disability and the disability is found not to be due solely to that injury, and such disability is materially and substantially greater than that which would have resulted from the subsequent injury alone, the employer shall provide compensation for the applicable period of weeks provided for in that section for the subsequent injury, or for [one hundred and four] *two hundred and eight* weeks, whichever is the greater.

In all other cases in which the employee has a permanent partial disability, found not to be due solely to that injury, and such disability is materially and substantially greater than that which would have resulted from the subsequent injury alone, the employer shall provide in addition to compensation under paragraphs (b) and (e) of this section, compensation for [one hundred and four] *two hundred and eight* weeks only.

(1) After cessation of the payments for the period of weeks provided for herein, the employee or his survivor entitled to benefits shall be paid the remainder of the compensation that would be due out of the special fund established in section 44.

(3) Any request for second injury fund apportionment in accordance with section 8(f) must be presented to the deputy commissioner and the Conservator prior to consideration by an administrative law judge.

(g) [Maintenance] *Compensation* for employees undergoing vocational rehabilitation: [An employee who as a result of injury is or may be expected to be totally or partially incapacitated for a remunerative occupation and who, under the direction of the Secretary as provided by section 39(c) of this Act, is being rendered fit to engage in remunerative occupation, shall receive additional compensation necessary for his maintenance, but such additional compensation shall not exceed $25 a week. The expense shall be paid out of the special fund established in section 44.]

(1) An employee who as a result of an injury is undergoing vocational rehabilitation for remunerative employment under the supervision of the deputy commissioner, pursuant to section 39(c), or with the approval of the employer, shall receive continued temporary total or partial compensation during the period of rehabilitation.

(2) An award for permanent disability may not be entered before the deputy commissioner determines, or the employer and employee agree, that vocational rehabilitation is unnecessary or until after vocational rehabilitation has been completed.

(3) If an employee unreasonably refuses to undergo vocational rehabilitation or to participate in a reasonable plan offered and financed by the employer to return the injured employee to work, the employee shall not be eligible to receive compensation payments that would otherwise be payable for the period of the refusal.

(h) The wage-earning capacity of an injured employee in cases of [partial] disability [under subdivisions (c)(21) of this section or under subdivision (e) of this section] shall be determined by his actual earnings if such actual earnings fairly and reasonably represent his wage-earning capacity: *Provided, however*, That if the employee has no actual earnings or his actual earnings do not fairly and reasonably represent his wage-earning capacity, the deputy commissioner

may, in the interest of justice, fix such wage-earning capacity as shall be reasonable, having due regard to the nature of his injury, the degree of physical impairment, his usual employment, and any other factors or circumstances in the case which may affect his capacity to earn wages in his disabled condition.[, including the effect of disability as it may naturally extend into the future.]

(i)[(A) Whenever the deputy commissioner determines that it is for the best interests of an injured employee entitled to compensation, he may approve agreed settlements of the interested parties, discharging the liability of the employer for such compensation, notwithstanding the provisions of section 15(b) and section 16 of this Act: *Provided*, That if the employee should die from causes other than the injury after the deputy commissioner has approved an agreed settlement as provided for herein, the sum so approved shall be payable, in the manner prescribed in this subsection, to and for the benefit of the persons enumerated in subsection (d) of this section.

[(B) Whenever the Secretary determines that it is for the best interests of the injured employee entitled to medical benefits, he may approve agreed settlements of the interested parties, discharging the liability of the employer for such medical benefits, notwithstanding the provisions of section 16 of this Act: *Provided*, That if the employee should die from causes other than the injury after the Secretary has approved an agreed settlement as provided herein, the sum so approved shall be payable in the manner prescribed in this subdivision, to and for the benefit of the persons enumerated in subdivision (d) of this section.]

(1) Whenever the parties to any claim for compensation, including survivors benefits, under this Act agree to a settlement, the deputy commissioner or administrative law judge shall approve the settlement within thirty days unless it is found to be inadequate or procured by duress. No liability of any employer, carrier, or both for disability or death benefits shall be discharged unless the application for settlement is approved by the deputy commissioner or administrative law judge. If the parties to the settlement are represented by counsel, then agreements shall be deemed approved unless specifically disapproved within thirty days after submission for approval.

(2) If the deputy commissioner disapproves an application for settlement under paragraph (1), the deputy commissioner shall issue a written statement within 30 days containing the reasons for disapproval. Any party to the settlement may request a hearing before an Administrative Law Judge in the manner prescribed by this Act. Following such hearing, an order shall be issued approving, repecting, or modifying the deputy commissioner's decision. If the parties to the settlement are represented by counsel, then agreements shall be deemed approved unless specifically disapproved within 30 days after submission for approval.

(3) A settlement approved under this section shall discharge the liability of the employer, carrier, or both. Such settlement may include future medical benefits if the parties so agree and the deputy commissioner approves. Settlements may be agreed upon at any stage of the proceeding including after entry of a final compensation order.

(j)(1) The employer may inform a disabled employee of his obligation to report to the employer not less than semi-annually any earn-

ings from employment or self-employment, on such forms as the Secretary shall specify in regulations.

(2) An employee who—

(A) fails to report the employee's earnings under paragraph (1) when requested; or

(B) knowingly and wilfully omits or understates any part of such earnings

and who is determined by the deputy commissioner to have violated clause (A) or (B) of this paragraph forfeits his right to compensation with respect to any period during which the employee was required to file such report.

(3) Compensation forfeited under this subsection, if already paid, shall be recovered by a deduction from the compensation payable to the employee in any amount and on such schedule as determined by the deputy commissioner.

COMPENSATION FOR DEATH

SEC. 9. If the injury causes death, [or if the employee who sustains permanent total disability due to the injury thereafter dies from causes other than the injury,] the compensation *therefor* shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

(a) Reasonable funeral expenses not exceeding [$1,000] *$3,000.*

(b) If there be a widow or widower and no child of the deceased to such widow or widower 50 per centum of the average wages of the deceased, during widowhood, or dependent widowerhood, with two years' compensation in one sum upon remarriage; and if there be a surviving child or children of the deceased, the additional amount of 16⅔ per centum of such wages for each child; in the case of the death or remarriage of such widow or widower, if there be one surviving child of the deceased employee, such child shall have his compensation increased to 50 per centum of such wages, and if there be more than one surviving child of the deceased employee, to such children, in equal parts, 50 per centum of such wages increased by 16⅔ per centum of such wages for each child in excess of one: *Provided*, That the total amount payable shall in no case exceed 66⅔ per centum of such wages. The deputy commissioner having jurisdiction over the claim may, in his discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the absence of such a requirement the appointment of a guardian for such purposes shall not be necessary.

(c) If there be one surviving child of the deceased, but no widow or widower, then for the support of such child 50 per centum of the wages of the deceased; and if there be more than one surviving child of the deceased, but no widow or dependent husband, then for the support of such children, in equal parts 50 per centum of such wages increased by 16⅔ per centum of such wages for each child in excess of one: *Provided*, That the total amount payable shall in no case exceed 66⅔ per centum of such wages.

(d) If there be no surviving wife or husband or child, or if the amount payable to a surviving wife or husband and to children shall be less in the aggregate than 66⅔ per centum of the average wages of the deceased; then for the support of grandchildren or brothers and

sisters, if dependent upon the deceased at the time of the injury, and any other persons who satisfy the definition of the term "dependent" in section 152 of title 26 of the United States Code, but are not otherwise eligible under this section, 20 per centum of such wages for the support of each such person during such dependency and for the support of each parent, or grandparent, of the deceased if dependent upon him at the time of the injury, 25 per centum of such wages during such dependency. But in no case shall the aggregate amount payable under this subdivision exceed the difference between 66⅔ per centum of such wages and the amount payable as hereinbefore provided to widow or widower and for the support of surviving child or children.

(e) In computing death benefits the average weekly wages of the deceased shall [be considered to have been] not *be* less than the [applicable] national average weekly wage as prescribed in section 6(b), [but the total weekly benefits shall not exceed the average weekly wages of the deceased.] *except that the total weekly benefits shall not exceed the lesser of the average weekly wages of the deceased or the benefit which the deceased employee would have been eligible to receive under section 6(b)(1).*

(f) All questions of dependency shall be determined as of the time of the injury.

(g) Aliens: Compensation under this chapter to aliens not residents (or about to become nonresidents) of the United States or Canada shall be the same in amount as provided for residents, except that dependents in any foreign country shall be limited to surviving wife and child or children, or if there be no surviving wife or child or children, to surviving father or mother whom the employee has supported, either wholly or in part, for the period of one year prior to the date of the injury, and except that the Secretary may, at his option or upon the application of the insurance carrier shall, commute all future installments of compensation to be paid to such aliens by paying or causing to be paid to them one-half of the commuted amount of such future installments of compensation as determined by the Secretary.

DETERMINATION OF PAY

SEC. 10. Except as otherwise provided in this Act, the average weekly wage of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation and shall be determined as follows:

(a) If the injured employee shall have worked in the employment in which he was working at the time of the injury, whether for the same or another employer, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary for a six-day worker and two hundred and sixty times the average daily wage or salary for a five-day worker, which he shall have earned in such employment during the days when so employed.

(b) If the injured employee shall not have worked in such employment during substantially the whole of such year, his average annual earning if a six-day worker, shall consist of three hundred times the average daily wage or salary and, if a five-day worker, two hundred and sixty times the average daily wage or salary, which an employee of the same class working substantially the whole of such immediately

preceding year in the same or in similar employment in the same or a neighboring place shall have earned in such employment during the days when so employed.

(c) If either of the foregoing methods of arriving at the average annual earnings of the injured employee cannot reasonably and fairly be applied, such average annual earnings shall be such sum as, having regard to the previous earnings of the injured employee in the employment in which he was working at the time of the injury, and of other employees of the same or most similar class working in the same or most similar employment in the same or neighboring locality, or other employment of such employee, including the reasonable value of the services of the employee if engaged in self-employment, shall reasonably represent the annual earning capacity of the injured employee.

(d) The average weekly wages of an employee shall be one fifty-second part of his average annual earnings.

(e) If it be established that the injured employee was a minor when injured and that under normal conditions his wages should be expected to increase during the period of disability the fact may be considered in arriving at his average weekly wages.

(f) Effective October 1 of each year *following the date of enactment of this Act*, the compensation or death benefits payable for permanent total disability or death arising out of injuries [sustained after the date of enactment of this subsection] subject to this Act shall be increased—

(*1*) by a percentage equal to the percentage (if any) by which the applicable national weekly wage for the period beginning on such October 1, as determined under section 6(b), exceeds the applicable national average weekly wage, as so determined, for the period beginning with the preceding October 1[.]*; or*

(*2*) *by 5 per centum, whichever percentage is less.*

(g) The weekly compensation after adjustment under subsection (f) shall be fixed at the nearest dollar. No adjustment of less than $1 shall be made, but in no event shall compensation for death benefits be reduced.

(h)(1) Not later than ninety days after the date of enactment of this subsection, the compensation to which an employee or his survivor is entitled due to total permanent disability or death which commenced or occurred prior to enactment of this subsection shall be adjusted. The amount of such adjustment shall be determined in accordance with regulations of the Secretary by designating as the employee's average weekly wage the applicable national average weekly wage determined under section 6(b) and (A) computing the compensation to which such employee or survivor would be entitled if the disabling injury or death had occurred on the day following such enactment date and (B) subtracting therefrom the compensation to which such employee or survivor was entitled on such enactment date; except that no such employee or survivor shall receive total compensation amounting to less than that to which he was entitled on such enactment date. Notwithstanding the foregoing sentence, where such an employee or his survivor was awarded compensation as the result of death or permanent total disability at less than the maximum rate that was provided in this Act at the time of the injury which resulted in the death or disability, then his average

weekly wage shall be determined by increasing his average weekly wage at the time of such injury by the percentage which the applicable national average weekly wage has increased between the year in which the injury occurred and the first day of the first month following the enactment of this section. Where such injury occurred prior to 1947, the Secretary shall determine, on the basis of such economic data as he deems relevant, the amount by which the employee's average weekly wage shall be increased for the pre-1947 period.

(2) Fifty per centum of any additional compensation or death benefit paid as a result of the adjustment required by paragraphs (1) and (3) of this subsection shall be paid out of the special fund established under section 44 of this Act, and 50 per centum shall be paid from appropriations.

(3) For the purposes of subsections (f) and (g) an injury which resulted in permanent total disability or death which occurred prior to the date of enactment of this subsection shall be considered to have occurred on the day following such enactment date.

GUARDIAN FOR MINOR OR INCOMPETENT

SEC. 11. The deputy commissioner may require the appointment by a court of competent jurisdiction, for any person who is mentally incompetent or a minor, of a guardian or other representative to receive compensation payable to such person under this Act and to exercise the powers granted to or to perform the duties required of such person under this Act.

NOTICE OF INJURY OR DEATH

SEC. 12. (a) Notice of an injury or death in respect of which compensation is payable under this Act shall be given within thirty days after the date of such injury or death, or thirty days after the employee or beneficiary is aware or [in the exercise of reasonable diligence] *by reason of medical advice* should have been aware of a relationship between the injury or death and the employment. Such notice shall be given (1) to the deputy commissioner in the compensation district in which injury or *death* occurred, and (2) to the employer. *Each employer shall designate those agents or other responsible officials, including first line supervisors, to receive such notice, in accordance with regulations prescribed by the Secretary and shall notify his employees of such designation in a manner prescribed by the Secretary in regulations.*

(b) Such notice shall be in writing, shall contain the name and address of the employee and a statement of the time, place, nature, and cause of the injury or death, and shall be signed by the employee or by some person on his behalf, or in the case of death, by any person claiming to be entitled to compensation for such death or by a person on his behalf.

(c) Notice shall be given to the deputy commissioner by delivering it to him or sending it by mail addressed to his office, and to the employer by delivering it to him or by sending it by mail addressed to him at his last known place of business. If the employer is a partnership, such notice may be given to any partner, or if a corporation,

such notice may be given to any agent or officer thereof upon whom legal process may be served or who is in charge of the business in the place where the injury occurred.

(d) Failure to give such notice shall not bar any claim under this Act (1) if the employer [(or his agent in charge of the business in the place where the injury occurred)] (*or his agent or agents or other responsible official or officials designated by the employer as designated under subsection (a)*) or the carrier had knowledge of the injury or death and the deputy commissioner determines that the employer or carrier has not been prejudiced by failure to give such notice, or (2) if the deputy commissioner excuses such failure on the ground that for some satisfactory reason such notice could not be given nor unless objection to such failure is raised before the deputy commissioner at the first hearing of a claim for compensation in respect of such injury or death.

TIME FOR FILING OF CLAIMS

SEC. 13. (a) Except as otherwise provided in this section, the right to compensation for disability or death under this Act shall be barred unless a claim therefor is filed within one year after the injury or death. If payment of compensation has been made without an award on account of such injury or death, a claim may be filed within one year after the date of the last payment. Such claim shall be filed with the deputy commissioner in the compensation district in which such injury or death occurred. The time for filing a claim shall not begin to run until the employee or beneficiary is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury or death and the employment.

(b) Notwithstanding the provisions of subdivision (a) failure to file a claim within the period prescribed in such subdivision shall not be a bar to such right unless objection to such failure is made at the first hearing of such claim in which all parties in interest are given reasonable notice and opportunity to be heard.

(c) If a person who is entitled to compensation under this Act is mentally incompetent or a minor, the provisions of subdivision (a) shall not be applicable so long as such person has no guardian or other authorized representative, but shall be applicable in the case of a person who is mentally incompetent or a minor from the date of appointment of such guardian or other representative, or in the case of a minor, if no guardian is appointed before he becomes of age, from the date he becomes of age.

(d) Where recovery is denied to any person, in a suit brought at law or in admiralty to recover damages in respect of injury or death, on the ground that such person was an employee and that the defendant was an employer within the meaning of this Act and that such employer had secured compensation to such employee under this Act, the limitation of time prescribed in subdivision (a) shall begin to run only from the date of termination of such suit.

PAYMENT OF COMPENSATION

SEC. 14. (a) Compensation under this Act shall be paid periodically, promptly, and directly to the person entitled thereto, without an award, except where liability to pay compensation is controverted by the employer.

(b) The first installment of compensation shall become due on the fourteenth day after the [employer] *employer's agent or agents as designated under section 12(a)* has knowledge of the injury or death, on which date all compensation then due shall be paid. Thereafter compensation shall be paid in installments, semimonthly, except where the deputy commissioner determines that payment in installments should be made monthly or at some other period.

(c) Upon making the first payment, and upon suspension of payment for any case, the employer shall immediately notify the deputy commissioner, in accordance with a form prescribed by the Secretary, that payment of compensation has begun or has been suspended, as the case may be.

(d) If the employer controverts the right to compensation he shall file with the deputy commissioner on or before the fourteenth day after he has knowledge of the alleged injury or death, a notice, in accordance with a form prescribed by the Secretary, stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death, and the grounds upon which the right to compensation is controverted.

(e) If any installment of compensation payable without an award is not paid within fourteen days after it becomes due, as provided in subdivision (b) of this section, there shall be added to such unpaid installment an amount equal to 10 per centum thereof, which shall be paid at the same time as, but in addition to, such installment, unless notice is filed under subdivision (d) of this section, or unless such non-payment is excused by the deputy commissioner after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

(f) If any compensation, payable under the terms of an award, is not paid within ten days after it becomes due, there shall be added to such unpaid compensation an amount equal to 20 per centum thereof, which shall be paid at the same time as, but in addition to, such compensation, unless review of the compensation order making such award is had as provided in section 21 and an order staying payments has been issued by the Board or court.

(g) Within sixteen days after final payment of compensation has been made, the employer shall send to the deputy commissioner a notice, in accordance with a form prescribed by the Secretary, stating that such final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, the date of the injury or death, and the date to which compensation has been paid. If the employer fails to so

notify the deputy commissioner within such time the Secretary shall assess against such employer a civil penalty in the amount of $100.

(h) The deputy commissioner (1) may upon his own initiative at any time in a case in which payments are being made without an award, and (2) shall in any case where right to compensation is controverted, or where payments of compensation have been stopped or suspended, upon receipt of notice from any person entitled to compensation, or from the employer, that the right to compensation is controverted, or that payments of compensation have been stopped or suspended, make such investigations, cause such medical examinations to be made, or hold such hearings, and take such further action as he considers will properly protect the rights of all parties.

(i) Whenever the deputy commissioner deems it advisable he may require any employer to make a deposit with the Treasurer of the United States to secure the prompt and convenient payment of such compensation, and payments therefrom upon any awards shall be made upon order of the deputy commissioner.

[(j) Whenever the deputy commissioner determines that it is in the interest of justice, the liability of the employer for compensation, or any part thereof as determined by the deputy commissioner with the approval of the Secretary, may be discharged by the payment of a lump sum equal to the present value of future compensation payments commuted, computed at 4 per centum true discount compounded annually. The probability of the death of the injured employee or other person entitled to compensation before the expiration of the period during which he is entitled to compensation shall be determined in accordance with the American Experience Table of Mortality, and the probability of the remarriage of the surviving wife shall be determined in accordance with the remarriage tables of the Dutch Royal Insurance Institution. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded.]

[(k)] (*j*) If the employer has made advance payments of compensation, he shall be entitled to be reimbursed out of any unpaid installment or installments of compensation due.

[(l)] (*k*) An injured employee or in case of death his dependents or personal representative, shall give receipts for payment of compensation to the employer paying the same and such employer shall produce the same for inspection by the deputy commissioner, whenever required.

INVALID AGREEMENTS

SEC. 15. (a) No agreement by an employee to pay any portion of premium paid by his employer to a carrier or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this Act shall be valid, and any employer who makes a deduction for such purpose from the pay of any employee entitled to the benefits of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000.

(b) No agreement by an employee to waive his right to compensation under this Act shall be valid.

ASSIGNMENT AND EXEMPTION FROM CLAIMS OF CREDITORS

SEC. 16. No assignment, release, or commutation of compensation or benefits due or payable under this Act except as provided by this Act, shall be valid, and such compensation and benefits shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived.

COMPENSATION A LIEN AGAINST ASSETS

SEC. 17. (a) Any person entitled to compensation under the provisions of this Act shall have a lien against the assets of the carrier or employer for such compensation without limit of amount, and shall, upon insolvency, bankruptcy, or reorganization in bankruptcy proceedings of the carrier or employer, or both, be entitled to preference and priority in the distribution of the assets of such carrier or employer or both.

(b) Where a trust fund which complies with section 302(c) of the Labor-Management Relations Act of 1947 (29 U.S.C. 186(c)) established pursuant to a collective-bargaining agreement in effect between an employer and an employee entitled to compensation under this Act had paid disability benefits to an employee which the employee is legally obligated to repay by reason of his entitlement to compensation under this Act, the Secretary may authorize a lien on such compensation in favor of the trust fund for the amount of such payments.

DEFAULTED PAYMENTS

SEC. 18. (a) In case of default by the employer in the payment of compensation due under any award of compensation for a period of thirty days after the compensation is due and payable, the person to whom such compensation is payable may, within one year after such default, make application to the deputy commissioner making the compensation order or a supplementary order declaring the amount of the default. After investigation, notice, and hearing, as provided in section 19, a deputy commissioner shall make a supplementary order, declaring the amount of the default, which shall be filed in the same manner as the compensation order. In case the payment in default is an installment of the award, the deputy commissioner may, in his discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of such supplementary order with the clerk of the Federal district court for the judicial district in which the employer has his principal place of business or maintains an office, or for the judicial district in which the injury occurred. In case such principal place of business or office or place where the injury occurred is in the District of Columbia, a copy of such supplementary order may be filed with the clerk of the United States District Court for the District of Columbia. Such supplementary order of the deputy commissioner shall be final, and the court shall upon the filing of the copy enter judgment for the amount declared in default by the supplementary order if such supplementary order is in accordance with law. Review of the judgment so entered may be had as in civil suits for damages at com-

mon law. Final proceedings to execute the judgment may be had by writ of execution in the form used by the court in suits at common law in actions of assumpsit. No fee shall be required for filing the supplementary order nor for entry of judgment thereon, and the applicant shall not be liable for costs in a proceeding for review of the judgment unless the court shall otherwise direct. The court shall modify such judgment to conform to any later compensation order upon presentation of a certified copy thereof to the court.

(b) In cases where judgment cannot be satisfied by reason of the employer's insolvency or other circumstances precluding payment, the Secretary of Labor may, in his discretion and to the extent he shall determine advisable after consideration of current commitments payable from the special fund established in section 44, make payment from such fund upon any award made under this Act, and in addition, provide any necessary medical, surgical, and other treatment required by section 7 of the Act in any case of disability where there has been a default in furnishing medical treatment by reason of the insolvency of the employer. Such an employer shall be liable for payment into such fund of the amounts paid therefrom by the Secretary of Labor under this subsection; and for the purpose of enforcing this liability, the Secretary of Labor for the benefit of the fund shall be subrogated to all the rights of the person receiving such payment or benefits, including the right of lien and priority provided for by section 17 of this Act, as against the employer and may by a proceeding in the name of the Secretary of Labor under section 18 or under subsection (c) of section 21 of this Act, or both, seek to recover the amount of the default or so much thereof as in the judgment of the Secretary is possible, or the Secretary may settle and compromise any such claim.

PROCEDURE IN RESPECT OF CLAIMS

SEC. 19. (a) Subject to the provisions of section 13 a claim for compensation may be filed with the deputy commissioner in accordance with regulations prescribed by the Secretary at any time after the first seven days of disability following any injury, or at any time after death, and the deputy commissioner shall have full power and authority to hear and determine all questions in respect of such claim.

(b) Within ten days after such claim is filed the deputy commissioner, in acocrdance with regulations prescribed by the Secretary, shall notify the employer and any other person (other than the claimant), whom the deputy commissioner considers an interested party, that a claim has been filed. Such notice may be served personally upon the emplover or other person, or sent to such employer or person by registered mail.

(c) The deputy commissioner shall make or cause to be made such investigations as he considers necessary in respect of the claim, and upon application of any interested party shall order a hearing thereon. If a hearing on such claim is ordered the deputy commissioner shall give the claimant and other interested parties at least ten days' notice of such hearing, served personally upon the claimant and other interested parties or sent to such claimant and other interested parties by registered mail or by certified mail, and shall within twenty days

after such hearing is had, by order, reject the claim or make an award in respect of the claim. If no hearing is ordered within twenty days after notice is given as provided in subdivision (b), the deputy commissioner shall, by order reject the claim or make an award in respect of the claim.

(d) Notwithstanding any other provisions of this Act, any hearing held under this Act shall be conducted in accordance with the provisions of section 554 of title 5 of the United States Code. Any such hearing shall be conducted by a hearing examiner qualified under section 3105 of that title. All powers, duties, and responsibilities vested by this Act, on the date of enactment of the Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972, in the deputy commissioners with respect to such hearings shall be vested in such hearing examiners.

(e) The order rejecting the claim or making the award (referred to in this Act as a compensation order) shall be filed in the office of the deputy commissioner, and a copy thereof shall be sent by registered mail or by certified mail to the claimant and to the employer at the last known address of each.

(f) An award of compensation for disability may be made after the death of an injured employee.

(g) At any time after a claim has been filed with him, the deputy commissioner may, with the approval of the Secretary, transfer such case to any other deputy commissioner for the purpose of making investigation, taking testimony, making physical examinations or taking such other necessary action therein as may be directed.

(h) An injured employee claiming or entitled to compensation shall submit to such physical examination by a medical officer of the United States or by a duly qualified physician designated or approved by the Secretary as the deputy commissioner may require. The place or places shall be reasonably convenient for the employee. Such physician or physicians as the employee, employer, or carrier may select and pay for may participate in an examination if the employee, employer, or carrier so requests. Proceedings shall be suspended and no compensation shall be payable for any period during which the employee may refuse to submit to examination.

PRESUMPTIONS

SEC. 20. In any proceeding for the enforcement of a claim for compensation under this Act it shall be presumed, in the absence of substantial evidence to the contrary—

(a) that the claim comes within the provisions of this Act,

(b) that sufficient notice of such claim has been given *except when the agent or agents or other responsible official or officials designated by the employer in sections 12(a) and (d) have not received actual or constructive notice*,

(c) that the injury was not occasioned solely by the intoxication of the injured employee,

(d) that the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another.

The mere existence of a physical impairment is insufficient to establish a claim under this Act.

REVIEW OF COMPENSATION ORDER

SEC. 21. (a) A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 19, and, unless proceedings for the suspension or setting aside of such order are instituted as provided in subdivision (b) of this section, shall become final at the expiration of the thirtieth day thereafter.

(b) (1) There is hereby established a Benefits Review Board which shall be composed of three members appointed by the Secretary from among individuals who are especially qualified to serve on such Board. The Secretary shall designate one of the members of the Board to serve as chairman.

(2) For the purpose of carrying out its functions under this Act, two members of the Board shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members.

(3) The Board shall be authorized to hear and determine appeals raising a substantial question of law or fact taken by any party in interest from decisions with respect to claims of employees under this Act and the extensions thereof. The Board's orders shall be based upon the hearing record. The findings of fact in the decision under review by the Board shall be conclusive if supported by substantial evidence in the record considered as a whole. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the Board. No stay shall be issued unless irreparable injury would otherwise ensue to the employer or carrier.

(4) The Board may, on its own motion or at the request of the Secretary, remand a case to the hearing examiner for further appropriate action. The consent of the parties in interest shall not be a prerequisite to a remand by the Board.

(5) Notwithstanding paragraphs (1) through (4), upon application of the Chairman of the Board, the Secretary may designate up to four Department of Labor Administrative Law Judges to temporarily serve on the Board. Any party aggrieved by the decisions of a panel or division of the Benefits Review Board may within 30 days after the decision petition the entire Board (permanent plus temporary members) for a rehearing en banc. Upon affirmative vote of the majority of the Board sitting en banc, the petition shall be granted. If a petition for a hearing en banc is granted, and the vote of the Board sitting en banc results in a tie, the decision of the panel or division of the Board shall be affirmed. The Benefits Review Board shall amend its Rules of Practice to conform with this paragraph. Temporary members shall be compensated at the same rate of compensation as they were receiving prior to such temporary designation. Except when sitting en banc, and for the purpose of carrying out its adjudicative functions under this Act, two members of the Board shall constitute a quorum of a panel or division and official adjudicative action can be taken only on the affirmative vote of at least two members of a division or panel.

(c) Any person adversely affected or aggrieved by a final order of the Board may obtain a review of that order in the United States court of appeals for the circuit in which the injury occurred, by filing in such court within sixty days following the issuance of such Board order a written petition praying that the order be modified or set aside.

A copy of such petition shall be forthwith transmitted by the clerk of the court, to the Board, and to the other parties, and thereupon the Board shall file in the court the record in the proceedings as provided in section 2112 of title 28, United States Code. Upon such filing, the court shall have jurisdiction of the proceeding and shall have the power to give a decree affirming, modifying, or setting aside, in whole or in part, the order of the Board and enforcing the same to the extent that such order is affirmed or modified. The orders, writs, and processes of the court in such proceeding may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the court. No stay shall be issued unless irreparable injury would otherwise ensue to the employer or carrier. The order of the court allowing any stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that irreparable damage would result to the employer, and specifying the nature of the damage.

(d) If any employer or his officers or agents fails to comply with a compensation order making an award, that has become final, any beneficiary of such award or the deputy commissioner making the order, may apply for the enforcement of the order to the Federal district court for the judicial district in which the injury occurred or to the United States District Court for the District of Columbia (if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such employer or his officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

(e) Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and section 18.

APPEARANCE OF UNITED STATES ATTORNEY FOR SECRETARY OF LABOR OR DEPUTY COMMISSIONER

SEC. 21a. Attorneys appointed by the Secretary shall represent the Secretary, the deputy commissioner, or the Board in any court proceedings under section 21 or other provisions of this Act except for proceedings in the Supreme Court of the United States.

MODIFICATION OF AWARDS

SEC. 22. Upon his own initiative, or upon the application of any party in interest, on the ground of a change in conditions or because of a mistake in a determination of fact by the deputy commissioner, the deputy commissioner may[, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one year after the rejection of a claim] review a compensation case in accordance with the procedure prescribed in respect of claims in section 19, and in accordance with such section issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation,

or award compensation. Such new order shall not affect any compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury, and if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid compensation, in such manner and by such method as may be determined by the deputy commissioner with the approval of the Secretary.

PROCEDURE BEFORE THE DEPUTY COMMISSIONER

SEC. 23. (a) In making an investigation or inquiry or conducting a hearing the deputy commissioner or Board shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this Act; but may make such investigation or inquiry or conduct such hearing in such manner as to best ascertain the rights of the parties. Declarations of a deceased employee concerning the injury in respect of which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the injury.

(b) Hearings before a deputy commissioner or Board shall be open to the public and shall be stenographically reported, and the deputy commissioners, subject to the approval of the Secretary, are authorized to contract for the reporting of such hearings. The Secretary shall by regulation provide for the preparation of a record of the hearings and other proceedings before the deputy commissioner or Board.

WITNESSES

SEC. 24. No person shall be required to attend as a witness in any proceeding before a deputy commissioner at a place outside of the State of his residence and more than one hundred miles from his place of residence, unless his lawful mileage and fee for one day's attendance shall be first paid or tendered to him; but the testimony of any witness may be taken by deposition or interrogatories according to the rules of practice of the Federal district court for the judicial district in which the case is pending (or of the United States District Court for the District of Columbia if the case is pending in the District).

WITNESS FEES

SEC. 25. Witnesses summoned in a proceeding before a deputy commissioner or whose depositions are taken shall receive the same fees and mileage as witnesses in courts of the United States.

COSTS IN PROCEEDINGS BROUGHT WITHOUT REASONABLE GROUNDS

SEC. 26. If the court having jurisdiction of proceedings in respect of any claim or compensation order determines that the proceedings in respect of such claim or order have been instituted or continued without reasonable ground, the costs of such proceedings shall be assessed against the party who has so instituted or continued such proceedings.

POWERS OF DEPUTY COMMISSIONERS

SEC. 27. (a) The deputy commissioner or Board shall have power to preserve and enforce order during any such proceedings; to issue subpoenas for, to administer oaths to, and to compel the attendance and testimony of witnesses, or the production of books, papers, documents, and other evidence, or the taking, of depositions before any designated individual competent to administer oaths; to examine witnesses; and to do all things conformable to law which may be necessary to enable him effectively to discharge the duties of his office.

(b) If any person in proceedings before a deputy commissioner or Board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness or after having taken the oath refuses to be examined according to law, the deputy commissioner or Board shall certify the facts to the district court having jurisdiction in the place in which he is sitting (or to the United States District Court for the District of Columbia if he is sitting in such District) which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court.

FEES FOR SERVICES

SEC. 28. (a) [If the employer or carrier declines to pay any compensation on or before the thirtieth day after receiving written notice of a claim for compensation having been filed from the deputy commissioner, on the ground that there is no liability for compensation within the provisions of this Act, and the person seeking benefits shall thereafter have utilized the services of an attorney at law in the successful prosecution of his claim, there shall be awarded, in addition to the award of compensation. in a compensation order, a reasonable attorney's fee against the employer or carrier in an amount approved by the deputy commissioner, Board, or court, as the case may be, which shall be paid directly by the employer or carrier to the attorney for the claimant in a lump sum after the compensation order becomes final.] *A claim for legal services or for any other services provided to or on account of a person with respect to a claim for or award of compensation under this Act is not valid unless approved by the deputy commissioner, an administrative law judge, the Board, or a court which is reviewing an order of an administrative law judge.*

(b) If the employer or carrier pays or tenders payment of compensation without an award pursuant to section 14(a) and (b) of this Act, and thereafter a controversy develops over the amount of additional compensation, if any, to which the employee may be entitled, the deputy commissioner or Board shall set the matter for an informal conference and following such conference the deputy commissioner or Board shall recommend in writing a disposition of the controversy. If the employer or carrier refuse to accept such written recommendation,

within fourteen days after its receipt by them, they shall pay or tender to the employee in writing the additional compensation, if any, to which they believe the employee is entitled. If the employee refuses to accept such payment or tender of compensation, and thereafter utilizes the services of an attorney at law, and if the compensation thereafter awarded is greater than the amount paid or tendered by the employer or carrier, a reasonable attorney's fee based solely upon the difference between the amount awarded and the amount tendered or paid shall be awarded in addition to the amount of compensation. The foregoing sentence shall not apply if the controversy relates to degree or length of disability, and if the employer or carrier offers to submit the case for evaluation by physicians employed or selected by the Secretary, as authorized in Section 7(e) and offers to tender an amount of compensation based upon the degree or length of disability found by the independent medical report at such time as an evaluation of disability can be made. If the claimant is successful in review proceedings before the Board or court in any such case an award may be made in favor of the claimant and against the employer or carrier for a reasonable attorney's fee for claimant's counsel in accord with the above provisions. In all other cases any claim for legal services shall not be assessed against the employer or carrier.

(c) In all cases fees for attorneys representing the claimant shall be approved in the manner herein provided. If any proceedings are had before the Board or any court for review of any action, award, order or decision, the Board or court may approve an attorney's fee for the work done before it by the attorney for the claimant. An approved attorney's fee, in cases in which the obligation to pay the fee is upon the claimant, may be made a lien upon the compensation due under an award; and the deputy commissioner, Board or court shall fix in the award approving the fee, such lien and manner of payment.

(d) In cases where an attorney's fee is awarded against an employer or carrier there may be further assessed against such employer or carrier as costs, fees and mileage for necessary witnesses attending the hearing at the instance of claimant. Both the necessity for the witness and the reasonableness of the fees of expert witnesses must be approved by the hearing officer, the Board, or the court, as the case may be. The amounts awarded against an employer or carrier as attorney's fees, costs, fees and mileage for witnesses shall not in any respect affect or diminish the compensation payable under this Act.

(e) A[ny] person who receives a[ny] fee[s], *gratuity, or* other consideration[, or any gratuity] on account of services rendered as a representative of a claimant, unless [such] *the* consideration [or gratuity] is approved by the deputy commissioner, *administrative law judge*, Board, or court, or who makes it a business to solicit employment for a lawyer, or for himself, [in] *with* respect [of any] *to a* claim or award for compensation *under this Act*, shall, upon conviction thereof, for each offense be punished by a fine of not more than $1,000 or [by imprisonment] *be imprisoned* for not more than one year, or [by] both [such fine and imprisonment].

RECORD OF INJURY OR DEATH

SEC. 29. Every employer shall keep a record in respect of any injury to an employee. Such record shall contain such information of disease, other disability, or death in respect of such injury as the Secretary may by regulation require, and shall be available to inspection by the Secretary or by any State authority at such times and under such conditions as the Secretary may by regulation prescribe.

REPORTS

SEC. 30. (a) Within ten days from the date of any injury *which would cause loss of one or more shifts of work* or death or from the date that the employer has knowledge of a disease or infection in respect of such injury, the employer shall send to the Secretary a report setting forth (1) the name, address, and business of the employer; (2) the name, address, and occupation of the employee; (3) the cause and nature of the injury or death; (4) the year, month, day, and hour when and the particular locality where the injury or death occurred; and (5) such other information as the Secretary may require. A copy of such report shall be sent at the same time to the deputy commissioner in the compensation district in which the injury occurred. *Notwithstanding the requirements of this section, each employer shall keep a record of each and every injury regardless of whether such injury results in the loss of one or more shifts of work.*

(b) Additional reports in respect of such injury and of the condition of such employee shall be sent by the employer to the Secretary and to such deputy commissioner at such times and in such manner as the Secretary may prescribe.

(c) Any report provided for in subdivision (a) or (b) shall not be evidence of any fact stated in such report in any proceeding in respect of any such injury or death on account of which the report is made.

(d) The mailing of any such report and copy in a stamped envelope, within the time prescribed in subdivision (a) or (b), to the Secretary and deputy commissioner, respectively, shall be a compliance with this section.

(e) Any employer, *insurance carrier, or self-insured employer* who *willfully* fails or refuses to send any report required [of him] by this section shall be subject to a civil penalty not to exceed [$500] *$25,000* for each such failure or refusal.

(f) Where the employer or the carrier has been given notice, or the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier has knoweldge, of any injury or death of an employee and fails, neglects, or refuses to file report thereof as required by the provisions of subdivision (a) of this section, the limitations in subdivision (a) of section 13 of this Act shall not begin to run against the claim of the injured employee or his dependents entitled to compensation, or in favor of either the employer or the carrier, until such report shall have been furnished as required by the provisions of subdivision (a) of this section.

PENALTY FOR MISREPRESENTATION—PROSECUTION OF CLAIMS

SEC. 31. (a)(1) A[ny] person who willfully makes a[ny] false [or misleading] statement or representation for the purpose of obtaining a[ny] benefit or payment under this Act shall be guilty of a [misdemeanor] *felony*, and on conviction thereof shall be punished by a fine of not to exceed [$1,000] *$25,000*, by imprisonment not to exceed [one year] *3 years*, or [by] both [such fine and imprisonment].

(2) The United States attorney for the district in which the injury is alleged to have occurred shall make every reasonable effort to promptly investigate each complaint made under this subsection.

(b)(1) A person may not prosecute or defend a claim other than his own under this Act other than a claimant, an attorney, a representative licensed by the Secretary, or an employee designated by an employer or carrier.

(2) A person may not prosecute or defend a claim other than his own under this Act if the person—

(A) is convicted of or pleads guilty to a crime in a State or Federal Court;

(B) gives false or substantially inaccurate information in an application for a license to prosecute or defend a claim under this Act;

(C) conceals or attempts to conceal material facts with respect to a claim under this Act;

(D) solicits or procures false testimony with respect to a claim under this Act; or

(E) misappropriates funds or documents entrusted to the person with respect to a claim under this Act.

(3) The Secretary shall issue such rules and regulations as are necessary to carry out this subsection.

(c) A person including, but not limited to, an employer, his duly authorized agent, or an employee of an insurance carrier who willfully makes false statements or representations for the purpose of denying or terminating benefits to an injured employee, or his dependents pursuant to section 9 if the injury results in death, shall be punished by a fine not to exceed $25,000, by imprisonment not to exceed 3 years, or by both.

SECURITY FOR COMPENSATION

SEC. 32. (a) Every employer shall secure the payment of compensation under this Act—

(1) By insuring and keeping insured the payment of such compensation with any stock company or mutual company or association, or with any other person or fund, while such person or fund is authorized.

(A) under the laws of the United States or of any State, to insure workmen's compensation, and (B) by the Secretary, to insure payment of compensation under this Act; or

(2) By furnishing satisfactory proof to the Secretary of his financial ability to pay such compensation and receiving an authorization from the Secretary to pay such compensation directly. The Secretary may, as a condition to such authorization, require such employer to deposit in a depository designated by the Secretary either an indemnity bond or securities (at the option of the employer) of a kind and

in an amount determined by the Secretary, *based on the employer's financial condition, the employer's previous record of payments, and other relevant factors*, and subject to such conditions as the Secretary may prescribe, which shall include authorization to the Secretary in case of default to sell any such securities sufficient to pay compensation awards or to bring suit upon such bonds, to procure prompt payment of compensation under this Act. Any employer securing compensation in accordance with the provisions of this paragraph shall be known as a self-insurer.

(b) In granting authorization to any carrier to insure payment of compensation under this Act the Secretary may take into consideration the recommendation of any State authority having supervision over carriers or over workmen's compensation, and may authorize any carrier to insure the payment of compensation under this Act in a limited territory. Any marine protection and indemnity mutual insurance corporation or association, authorized to write insurance against liability for loss or damage from personal injury and death, and for other losses and damages, incidental to or in respect of the ownership, operation, or chartering of vessels on a mutual assessment plan, shall be deemed a qualified carrier to insure compensation under this Act. The Secretary may suspend or revoke any such authorization for good cause shown after a hearing at which the carrier shall be entitled to be heard in person or by counsel and to present evidence. No suspension or revocation shall affect the liability of any carrier already incurred.

COMPENSATION FOR INJURIES WHERE THIRD PERSONS ARE LIABLE

SEC. 33. (a) If on account of a disability or death for which compensation is payable under this Act the person entitled to such compensation determines that some person other than the employer or a person or persons in his employ is liable in damages he need not elect whether to receive such compensation or to recover damages against such third person.

(b) Acceptance of such compensation under an award in a compensation order filed by the deputy commissioner, *an Administrative Law Judge* or Board shall operate as an assignment to the employer of all [right] *rights* of the person entitled to compensation to recover damages against such third person unless such person shall commence an action against such third person within six months after such award. *For the purpose of this subsection, the term "award" with respect to a compensation order means a formal order issued by the deputy commissioner, an administrative law judge, or Board; if the employer fails to commence an action against such third person within a reasonable time after the cause of action is assigned under this section, the right to bring such action shall revert to the person entitled to compensation.*

(c) The payment in section 44 shall operate as an assignment to the employer of all right of the legal representative of the deceased (hereinafter referred to as "representative") to recover damages against such third person.

(d) Such employer on account of such assignment may either institute proceedings for the recovery of such damages or may compromise with such third person either without or after instituting such proceeding.

(e) Any amount recovered by such employer on account of such assignment, whether or not as the result of a compromise, shall be distributed as follows:

(1) The employer shall retain an amount equal to—

(A) the expenses incurred by him in respect to such proceedings or compromise (including a reasonable attorney's fee as determined by the deputy commissioner or Board);

(B) the cost of all benefits actually furnished by him to the employee under section 7;

(C) all amounts paid as compensation;

(D) tthe present value of all amounts thereafter payable as compensation, such present value to be computed in accordance with a schedule prepared by the Secretary, and the present value of the cost of all benefits thereafter to be furnished under section 7, to be estimated by the deputy commissioner, and the amounts so computed and estimated to be retained by the employer as a trust fund to pay such compensation and the cost of such benefits as they become due, and to pay any sum finally remaining in excess thereof to the person entitled to compensation or to the representative; and

(2) The employer shall pay any excess to the person entitled to compensation or to the representative, less one-fifth of such excess which shall belong to the employer.

(f)(*1*) If [the] *a* person entitled to compensation *under the Act* institutes proceedings within the period [prescribed in section 33(b)] *described in subsection (b)*, the employer shall be required to pay, as compensation under this Act, a sum equal to the excess of the amount which the [Secretary] *deputy commissioner, an administrative law judge, or Board* determines is payable on account of [such] *the* injury or death [over] *above* the amount recovered *in the proceedings* against [such] *a* third person.

(*2*) *Any amount recovered by the person entitled to compensation on account of the proceedings by judgment or settlement, whether or not the settlement is approved by the employer in accordance with subsection (a), shall be distributed as follows:*

(*A*) *The person entitled to compensation shall pay to the employer an amount equal to the sum of—*

(*i*) *the cost of all benefits furnished to the person by the employer under section 7; and*

(*ii*) *all other amounts payable as compensation or benefits under this Act.*

(*B*) *The person entitled to compensation or the person's representative shall retain the amount remaining after the payment required by subparagraph (A).*

(g) (*1*) if [compromise with such third person is made by] the person entitled to compensation (or [such] *the person's* representative) [of] *enters into a settlement with a third person referred to in subsection (a) for* an amount less than the compensation to which [such] *the* person (or *the person's* representative) would be entitled [to] under this Act, the employer shall be liable for compensation as determined [in subdivision] *under subsection* (f) only if [the] written approval of [such compromise] *the settlement* is obtained from the employer and [its insurance] *the employer's* carrier, *before the*

settlement is executed, and by the person entitled to compensation (or [such] *the person's representative.* [at the time of or prior to such compromise] *The approval shall be made* on a form provided by the Secretary and *shall* be filed in the office of the deputy commissioner [having jurisdiction of such injury or death] within thirty days after [such compromise is made] *the settlement is entered into.*

(2) If no written approval of the settlement is obtained and filed as required by paragraph (1), or if the employee fails to notify the employer of any settlement obtained from or judgment rendered against a third person, all rights to compensation and medical benefits under this Act shall be terminated, regardless of whether the employer or the employer's insurer has made payments or acknowledged entitlement to benefits under this Act.

(3) Payment by the special fund established under section 44 shall be a lien upon the proceeds of any settlement obtained from or judgment rendered against a third person referred to under subsection (a). Notwithstanding any other provision of law, such lien shall be enforceable against the employee, regardless of whether the Conservator on behalf of the special fund has agreed to or has received actual notice of the settlement or judgment.

(h) Where the employee is insured and the insurance carrier has assumed the payment of the compensation, the insurance carrier shall be subrogated to all the rights of the employer under this section.

(i) The right to compensation or benefits under this Act shall be the exclusive remedy to an employee when he is injured, or to his eligible survivors or legal representatives if he is killed, by the negligence or wrong of any other person or persons in the same employ: Provided, That this provision shall not affect the liability of a person other than an officer or employee of the employer.

COMPENSATION NOTICE

SEC. 34. Every employer who has secured compensation under the provisions of this Act shall keep posted in a conspicuous place or places in and about his place or places of business typewritten or printed notices, in accordance with a form prescribed by the Secretary, stating that such employer has secured the payment of compensation in accordance with the provisions of this Act. Such notices shall contain the name and address of the carrier, if any, with whom the employer has secured payment of compensation and the date of of the expiration of the policy.

SUBSTITUTION OF CARRIER FOR EMPLOYER

SEC. 35. In any case where the employer is not a self-insurer, in order that the liability for compensation imposed by this Act may be most effectively discharged by the employer, and in order that the administration of this Act in respect of such liability may be facilitated, the Secretary shall by regulation provide for the discharge, by the carrier for such employer, of such obligations and duties of the employer in respect to such liability, imposed by this Act upon the employer, as it considers proper in order to effectuate the provisions of this Act. For such purposes (1) notice to or knowledge of an em-

ployer of the occurrence of the injury shall be notice to or knowledge of the carrier, (2) jurisdiction of the employer by a deputy commissioner, the Board, or the Secretary, or any court under this Act shall be jurisdiction of the carrier and (3) any requirement by a deputy commissioner, the Board or the Secretary, or any court under any compensation order, finding, or decision shall be binding upon the carrier in the same manner and to the same extent as upon the employer.

INSURANCE POLICIES

SEC. 36. (a) Every policy or contract of insurance issued under authority of this Act shall contain (1) a provision to carry out the provisions of section 35, and (2) a provision that insolvency or bankruptcy of the employer and/or discharge therein shall not relieve the carrier from payment of compensation for disability or death sustained by an employee during the life of such policy or contract.

(b) No contract or policy of insurance issued by a carrier under this Act shall be canceled prior to the date specified in such contract or policy for its expiration until at least thirty days have elapsed after a notice of cancellation has been sent to the deputy commissioner and to the employer in accordance with the provisions of subdivision (c) of section 12.

CERTIFICATE OF COMPLIANCE WITH THIS ACT

SEC. 37. No stevedoring firm shall be employed in any compensation district by a vessel or by hull owners until it presents to such vessel or hull owners a certificate issued by a deputy commissioner assigned to such district that it has complied with the provisions of this Act requiring the securing of compensation to its employees. Any person violating the provisions of this section shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

PENALTY FOR FAILURE TO SECURE PAYMENT OF COMPENSATION

SEC. 38. (a) Any employer required to secure the payment of compensation under this Act who fails to secure such compensation shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such fine or imprisonment as herein provided for the failure of such corporation to secure the payment of compensation; and such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any compensation or other benefit which may accrue under the said Act in respect to any injury which may occur to any employee of such corporation while it shall so fail to secure the payment of compensation as required by section 32 of this Act.

(b) Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property belonging to such employer, after one of his employees has

been injured within the purview of this Act, and with intent to avoid the payment of compensation under this Act to such employee or his dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both such fine and imprisonment; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such penalty of imprisonment as well as jointly liable with such corporation for such fine.

(c) This section shall not affect any other liability of the employer under this Act.

ADMINISTRATION AND VOCATIONAL REHABILITATION

SEC. 39. (a) Except as otherwise specifically provided, the Secretary shall administer the provisions of this Act, and for such purpose the Secretary is authorized (1) to make such rules and regulations; (2) to appoint and fix the compensation of such temporary technical assistants and medical advisers, and, subject to the provisions of the civil service laws, to appoint, and, in accordance with the Classification Act of 1923, to fix the compensation of such deputy commissioners (except deputy commissioners appointed under subdivision (a) of section 40) and other officers and employees; and (3) to make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere, for law books, books of reference, periodicals, and for printing and binding) as may be necessary in the administration of this Act. All expenditures of the Secretary in the administration of this Act shall be allowed and paid as provided in section 45 upon the presentation of itemized vouchers therefor approved by the Secretary.

(b) The Secretary shall establish compensation districts, to include the high seas and the areas within the United States to which this Act applies, and shall assign to each such district one or more deputy commissioners, as the Secretary deems advisable. Judicial proceedings under sections 18 and 21 of this Act in respect to any injury or death occurring on the high seas shall be instituted in the district court within whose territorial jurisdiction is located the office of the deputy commissioner having jurisdiction in respect of such injury or death (or in the United States District Court for the District of Columbia if such office is located in such District).

(c) (1) The Secretary shall, upon request, provide persons covered by this Act with information and assistance relating to the Act's coverage and compensation and the procedures for obtaining such compensation including assistance in processing a claim. The Secretary may, upon request, provide persons covered by this Act with legal assistance in processing a claim. The Secretary shall also provide employees receiving compensation information on medical, manpower, and vocational rehabilitation services and assist such employees in obtaining the best such services available.

(2) The Secretary shall direct the vocational rehabilitation of permanently disabled employees and shall arrange with the appropriate public or private agencies in States or Territories, possessions, or the District of Columbia for such rehabilitation. The Secretary

may in his discretion furnish such prosthetic appliances or other apparatus made necessary by an injury upon which an award has been made under this Act to render a disabled employee fit to engage in a remunerative occupation. Where necessary rehabitation services are not available otherwise, the Secretary of Labor may, in his discretion, use the fund provided for in section 44 in such amounts as may be necessary to procure such services, including necessary prosthetic appliances or other apparatus. This fund shall also be available in such amounts as may be authorized in annual appropriations for the Department of Labor for the costs of administering this subsection.

DEPUTY COMMISSIONERS

SEC. 40. (a) The Secretary may appoint as deputy commissioners any member of any board, commission, or other agency of a State to act as deputy commissioner for any compensation district or part thereof in such State, and may make arrangements with such board, commission, or other agency for the use of the personnel and facilities thereof in the administration of this Act. The Secretary may make such arrangements as may be deemed advisable by him for the payment of expenses of such board, commission, or other agency, incurred in the administration of this Act pursuant to this section, and for the payment of salaries to such board, commission, or other agency, or the members thereof, and may pay any amounts agreed upon to the proper officers of the State, upon vouchers approved by the Secretary.

(b) In any Territory of the United States or in the District of Columbia a person holding an office under the United States may be appointed deputy commissioner and for services rendered as deputy commissioner may be paid compensation, in addition to that he is receiving from the United States, in an amount fixed by the Secretary in accordance with the Classification Act of 1923.

(c) Deputy commissioners (except deputy commissioners appointed under subdivision (a) of this section) may be transferred from one compensation district to another and may be temporarily detailed from one compensation district for service in another in the discretion of the Secretary.

(d) Each deputy commissioner shall maintain and keep open during reasonable business hours an office, at a place designated by the Secretary, for the transaction of business under this Act, at which office he shall keep his official records and papers. Such office shall be furnished and equipped by the Secretary, who shall also furnish the deputy commissioner with all necessary clerical and other assistants, records, books, blanks, and supplies. Wherever practicable such office shall be located in a building owned or leased by the United States; otherwise the Secretary shall rent suitable quarters.

(e) If any deputy commissioner's is removed from office, or for any reason ceases to act as such deputy commissioner, all of his official records and papers and office equipment shall be transferred to his successor in office or, if there be no successor, then to the Secretary or to a deputy commissioner designated by the Secretary.

(f) Neither a deputy commissioner or Board member nor any business associate of a deputy commissioner or board member shall appear as attorney in any proceeding under this Act, and no deputy

commissioner or Board member shall act in any such case in which he is interested, or when he is employed by any party in interest or related to any party in interest by consanguinity or affinity within the third degree as determined by the common law.

SAFETY RULES AND REGULATIONS

SEC. 41. (a) Every employer shall furnish and maintain employment and places of employment which shall be reasonably safe for his employees in all employments covered by this Act and shall install, furnish, maintain, and use such devices and safeguards with particular reference to equipment used by and working conditions established by such employers as the Secretary may determine by regulation or order to be reasonably necessary to protect the life, health, and safety of such employees, and to render safe such employment and places of employment, and to prevent injury to his employees. However, the Secretary may not make determinations by regulation or order under this section as to matters within the scope of title 52 of the Revised Statutes and Acts supplementary or amendatory thereto, the Act of June 15, 1917 (ch. 30, 40 Stat. 220), as amended, or section 4(e) of the Act of August 7, 1953 (ch. 345, 67 Stat. 462), as amended.

(b) The Secretary, in enforcing and administering the provisions of this section, is authorized in addition to such other powers and duties as are conferred upon him—

(1) to make studies and investigations with respect to safety provisions and the causes and prevention of injuries in employments covered by this Act and from time to time make to Congress such recommendations as he may deem proper as to the best means of preventing such injuries, and in making such studies and investigations to cooperate with any agency of the United States or with any State agency engaged in similar work;

(2) to utilize the services of any agency of the United States or any State agency engaged in similar work (with the consent of such agency) in connection with the administration of this section;

(3) to promote uniformity in safety standards in employments covered by this Act through cooperative action with any agency of the United States or with any State agency engaged in similar work;

(4) to provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe working conditions in employments covered by this Act, and to consult with and advise employers as to the best means of preventing injuries;

(5) to hold such hearings, issue such orders, and make such decisions, based upon findings of fact, as are deemed to be necessary to enforce the provisions of this section, and for such purposes the Secretary and the district courts shall have the authority and jurisdiction provided by section 5 of the Act of June 30, 1936 (ch. 881, 49 Stat. 2036), as amended, and the Secretary shall be represented in any court proceedings as provided in the Act of May 4, 1928 (ch. 502, 45 Stat. 490, as amended.

(c) The Secretary or his authorized representative may inspect such places of employment, question such employees, and investigate such

conditions, practices, or matters in connection with employment subject to this Act, as he may deem appropriate to determine whether any person has violated any provision of this section, or any rule or regulation issued thereunder, or which may aid in the enforcement of the provisions of this section. No employer or other person shall refuse to admit the Secretary or his authorized representatives to any such place or shall refuse to permit any such inspection.

(d) Any employer may request the advice of the Secretary or his authorized representative, in complying with the requirements of any rule or regulation adopted to carry out the provisions of this section. In case of practical difficulties or unnecessary hardship, the Secretary in his discretion may grant variations from any such rule or regulation, or particular provisions thereof, and permit the use of other or different devices if he finds that the purpose of the rule or regulation will be observed by the variation and the safety of employees will be equally secured thereby. Any person affected by such rule or regulation, or his agent, may request the Secretary to grant such variation, stating in writing the grounds on which his request is based. Any authorization by the Secretary of a variation shall be in writing, shall describe the conditions under which the variation shall be permitted, and shall be published as provided in section 3 of the Administrative Procedure Act (ch. 324, 60 Stat. 237), as amended. A properly indexed record of all variations shall be kept in the office of the Secretary and open to public inspection.

(e) The United States district courts shall have jurisdiction for cause shown, in any action brought by the Secretary, represented as provided in section 21a of this act, to restrain violations of this section or of any rule, regulation, or order of the Secretary adopted to carry out the provisions of this section.

(f) Any employer who, willfully violates or fails or refuses to comply with the provisions of subsection (a) of this section, or with any lawful rule, regulation, or order adopted to carry out the provisions of this section, and any employer or other person who willfully interferes with, hinders, or delays the Secretary or his authorized representative in carrying out his duties under subsection (c) of this section by refusing to admit the Secretary or his authorized representative to any place, or to permit the inspection or examination of any employment or place of employment, or who willfully hinders or delays the Secretary or his authorized representative in the performance of his duties in the enforcement of this section, shall be guilty of an offense, and, upon conviction thereof, shall be punished for each offense by a fine of not less than $100 nor more than $3,000; and in any case where such employer is a corporation, the officer who willfully permits any such violation to occur shall be guilty of an offense, and, upon conviction thereof, shall be punished also for each offense by a fine of not less than $100 nor more than $3,000. The liability hereunder shall not affect any other liability of the employer under this Act.

(g) (1) The provisions of this section shall not apply in the case of any employment relating to the operations for the exploration, production, or transportation by pipeline of mineral resources upon the navigable waters of the United States, nor under the authority of the Act of August 7, 1953 (ch. 345, 67 Stat. 462), nor in the case of any employment in connection with lands (except filled in, made or reclaimed lands) beneath the navigable waters as defined in the Act

of May 22, 1953 (ch. 65, 67 Stat. 29) nor in the case of any employment for which compensation in case of disability or death is provided for employees under the authority of the Act of May 17, 1928 (ch. 612, 45 Stat. 600), as amended, nor under the authority of the Act of August 16, 1941 (ch. 357, 55 Stat. 622), as amended.

(2) The provisions of this section, with the exception of paragraph (1) of subsection (b), shall not be applied under the authority of the Act of September 7, 1916 (ch. 458, 39 Stat. 742) as amended.

TRAVELING EXPENSES

SEC. 42. The Secretary, deputy commissioners, and other employees of the Secretary shall be entitled to receive their necessary traveling expenses and expenses actually incurred for subsistence while traveling on official business and away from their designated stations, as provided by the Subsistence Expense Act of 1926.

ANNUAL REPORT

SEC. 43. The Secretary shall make to Congress at the beginning of each regular session a report of the administration of this Act for the preceding fiscal year, including a detailed statement of receipts of and expenditures from the funds established in sections 44 and 45, together with such recommendations as the Secretary deems advisable.

SPECIAL FUND

SEC. 44. (a) There is hereby established in the Treasury of the United States a special fund. Such fund shall be administered by the Secretary. The Treasurer of the United States shall be the custodian of such fund, and all moneys and securities in such fund shall be held in trust by such Treasurer and shall not be money or property of the United States.

(b) The Treasurer is authorized to disburse moneys from such fund only upon order of the Secretary. He shall be required to give bond in an amount to be fixed and with securities to be approved by the Secretary of the Treasury and the Comptroller General of the United States conditioned upon the faithful performance of his duty as custodian of such fund.

(c) Payments into such fund shall be made as follows:

(1) Whenever the Secretary determines that there is no person entitled under this Act to compensation for the death of an employee which would otherwise be compensable under this Act, the appropriate employer shall pay $5,000 as compensation for the death of such an employee.

(2) At the beginning of each calendar year the Secretary shall estimate the probable expenses of the fund during that calendar year and each carrier or self-insurer shall make payments into the fund on a prorated assessment by the Secretary in the proportion that the total compensation and medical payments made on risks covered by this Act by each carrier and self-insurer bears to the total of such payments made by all carriers and self-insurers under the Act in the prior calendar year in accordance with a formula and schedule to be determined

from time to time by the Secretary to maintain adequate reserves in the fund.

(3) All amounts collected as fines and penalties under the provisions of this Act shall be paid into such fund.

(d) (1) For the purpose of making rules, regulations, and determinations under this section and for providing enforcement thereof, the Secretary may investigate and gather appropriate data from each carrier and self-insurer. For that purpose, the Secretary may enter and inspect such places and records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices or matters as he may deem necessary or appropriate.

(2) Each carrier and self-insurer shall make, keep, and preserve such records, and make such reports and provide such additional information, as prescribed by regulation or order of the Secretary, as the Secretary deems necessary or appropriate to carry out his responsibilities under this section.

(3) For the purpose of any hearing or investigation related to determinations or the enforcement of the provisions of this section, the provisions of sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 16, 1914, as amended (U.S.C., title 15, secs. 49 and 50), are hereby made applicable to the jurisdiction, powers, and duties of the Secretary of Labor.

(e) There is hereby authorized to be appropriated to the Secretary the sum of $2,000,000 which the Secretary shall immediately deposit into the fund. Upon deposit in the fund such moneys shall be treated as the property of such fund. This sum, without additional payments for interest, shall be repaid from the money or property belonging to the fund on a schedule of repayment set by the Secretary: *Provided*, That the full repayment must be made no later than five years from the date of deposit into the fund. Each such repayment, as made, shall be covered into the Treasury of the United States as miscellaneous receipts.

(f) The Treasurer of the United States shall deposit any moneys paid into such fund into such depository banks as the Secretary may designate and may invest any portion of the funds which, in the opinion of the Secretary, is not needed for current requirements, in bonds or notes of the United States or of any Federal land bank.

(g) Neither the United States nor the Secretary shall be liable in respect of payments authorized under section 8 in an amount greater than the money or property deposited in or belonging to such fund.

(h) The Comptroller General of the United States shall audit the account for such fund, but the action of the Secretary in making payments from such fund shall be final and not subject to review, and the Comptroller General is authorized and directed to allow credit in the accounts of any disbursing officer of the Secretary for payments made from such funds authorized by the Secretary.

(i) All civil penalties provided for in this Act shall be collected by civil suit brought by the Secretary.

(j) The proceeds of this fund shall be available for payments:

(1) Pursuant to section 10 and 11 with respect to initial and subsequent annual adjustments in compensation for total permanent disability or death which occurred prior to the effective date of this subsection.

(2) Under section 8(f) and (g), under section 18(b), and under section 39(c).

(3) To repay the sums deposited in the fund pursuant to subsection (d).

(4) To defray the expense of making examinations as provided in section 7.

(k) At the close of each fiscal year the Secretary shall submit to the Congress a complete audit of the fund.

[ADMINISTRATION FUND

[SEC. 45. (a) There is established in the Treasury of the United States a special fund for the purpose of providing for the payment of all expenses in respect of the administration of this Act. Such fund shall be administered by the Secretary. The Treasurer of the United States shall be custodian of such fund, and all moneys and securities in such fund shall be held in trust by such Treasurer and shall not be the money or property of the United States.

[(b) The provisions of subdivisions (b), (d), and (f) of section 44 shall be applicable to the fund established.]

SPECIAL FUND CONSERVATION COMMITTEE—FUND CONSERVATOR

SEC. 45. (a) (1) There is established the Special Fund Conservation Committee (hereinafter in this section referred to as the "Conservation Committee"). The Conservation Committee shall be responsible for protecting the financial integrity of the special fund established under section 44 (hereinafter in this section referred to as the "special fund") by insuring that all distributions from the special fund are made in accordance with this Act.

(2)(A) The Conservation Committee shall be composed of five members appointed by the Secretary, who shall be representatives of carriers authorized under section 32, including self-insurers and representatives of employers.

(B) The terms of office of the members of the Conservation Committee shall be three years, except that of the members first appointed, one member shall be appointed for a term of one year, two members shall be appointed for a term of two years, and two members shall be appointed for a term of three years, as determined by the Secretary at the time of appointment.

(C) A vacancy on the Committee shall be filled in the manner in which the original appointment was made. A member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of the term. A member may serve after the expiration of the member's term until the member's successor has taken office.

(D) Members of the Conservation Committee shall serve without pay and may not be reimbursed for any travel or transportation expenses.

(E) The Chairman shall be elected by the members of the Conservation Committee.

(F) The Conseravtion Committee shall meet at the call of the Chairman or a majority of its members.

(G) Upon request of the Conservation Committee, the Secretary shall provide such administrative services as the Committee shall require.

(3)(A) The Conservation Committee may secure, directly from the Secretary of Labor, the Secretary of the Treasury, the Board, and a deputy commissioner, information necessary to enable it to carry out this section, including copies of all official records and reports. Upon request of the Chairman of the Conservation Committee, the appropriate Secretary, the Chairman of the Board, or the deputy commissioner shall furnish the information to the Committee.

(B) The Conservation Committee may provide (by contract) for the auditing of the account of the special fund. The Conservation Committee may secure directly from the Comptroller General of the United States information derived from an audit conducted pursuant to section 44(g). Upon request of the Chairman of the Conservation Committee, the Comptroller General shall furnish the information to the Conservation Committee.

(4) The Conservation Committee may establish such policies and procedures as may be necessary to carry out this section.

(5) The Conservation Committee shall transmit to the Secretary of Labor, the Secretary of the Treasury, and to each House of Congress a report, not later than one year after the date of enactment of this Act, and each year thereafter. The report shall contain a detailed statement of the findings and conclusions of the Conservation Committee with regard to the financial integrity of the special fund, together with its recommendations for such legislative and administrative actions as it considers appropriate.

(b)(1)(A) To carry out its responsibilities under this section, the Conservation Committee shall appoint a Fund Conservator (hereinafter in this section referred to as the "Conservator").

(B) The Conservation Committee may authorize the Conservator to take any action which the Conservation Committee is authorized to take under this section.

(2)(A) The Secretary shall cause notice to be given to the Conservator whenever a payment from the special fund is ordered by the Secretary or whenever an administrative or judicial proceeding in which a party to the proceeding seeks to establish a liability of the special fund is scheduled to convene. A proceeding on an application for apportionment under section 8(f) of this Act may not be convened less than thirty days after notice of the proceeding has been given to the Conservator, unless the Conservator waives the limitation in writing to the Secretary.

(B) Except as provided in subparagraph (C), the Conservator shall be a party in an administrative or judicial proceeding in which a party to the proceeding seeks to establish a liability of the special fund. The Conservator shall have the same rights in the proceeding as any other party, including the right to participate in a settlement of a claim brought against the fund.

(C) The Conservator may withdraw as a party from a proceeding described in subparagraph (B), after giving written notice to the Secretary and the officer or judge presiding over the proceeding, if the Conservator determines that there is a substantial likelihood that the liability of the fund will be established in the proceeding.

(D) The Conservator may participate as a party in a case where the liability of the special fund is already established and a proceeding is convened to establish the amount of the liability, including a proceeding to review a compensation award under section 22.

(E) The functions and responsibilities of the Conservator established under subparagraphs (B) through (D) shall extend to all proceedings described in such subparagraphs which are pending on the date of enactment of this Act.

(3)(A) When medical questions or questions relating to the vocational rehabilitation of a claimant are raised in a case in which the Conservator is a party pursuant to paragraph (2), the Conservator may order an examination or evaluation of the claimant in the proceeding by a physician whose services have been procured by the Conservator under paragraph (5)(B)(ii).

(B) If the claimant refuses to comply with an order under subparagraph (A), the proceeding relating to the claimant's case shall be suspended and, in appropriate cases, the Secretary may suspend benefits, unless the physician or other individual who would be responsible for administering the examination or evaluation determines that the administration of the examination or evaluation would constitute a risk to the health of the claimant.

(4)(A) Subject to such rules as the Conservation Committee may prescribe and to subparagraph (B), the Conservator may appoint and fix the pay of such professional and clerical personnel as the Conservator considers appropriate.

(B) The staff of the Conservator may be appointed without regard to the provisions of title 5, United States Code (governing appointments in the competitive service), and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates).

(5)(A) Subject to such rules as the Conservation Committee may prescribe, the Conservator may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(B) Subject to such rules as the Conservation Committee may prescribe, the Conservator may procure the services of—

(i) counsel, subject to subparagraph (C), to represent the interests of the special fund in an administration or judicial proceeding described in paragraph (2); and

(ii) medical, vocational, and other experts and witnesses to defend a claim against the special fund.

(C) The Conservator shall establish standards for the selection of a counsel under subparagraph (A) which will ensure the selection of individuals who are specially qualified to serve by virtue of their education, training, or experience, including experience in the field of workmen's compensation law.

(c) All administrative expenses incurred by the Conservation Committee and the Conservator under this section shall be paid from the special fund.

[APPROPRIATION

[SEC. 46. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $250,000, which shall be covered into the administration fund established

in section 45 and shall be available for expenses incurred in the administration of this Act during the remainder of the fiscal year ending June 30, 1927, and during the fiscal year ending June 30, 1928. All unexpended balances of any appropriations made under authority of this section, remaining in such fund on July 1, 1928, shall be covered into the Treasury of the United States as miscellaneous receipts.

[AVAILABILITY OF APPROPRIATIONS

[SEC. 47. The expenses incurred for salaries and contingent expenses by the Secretary in the administration (1) of the Act entitled "An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes," approved September 7, 1916, as amended, and (2) of this Act, may be paid from the appropriations for salaries and contingent expenses for the administration of such Act of September 7, 1916, and from the fund established in section 45 of this Act, in such proportion as the Secretary, with the approval of the Director of the Bureau of the Budget, determines to be fairly attributable to the cost of administration of the respective Act, but the total amount paid from such appropriation and such fund in any fiscal year on account of the administration of such Act of September 7, 1916, shall not exceed the amounts appropriated for salaries and contingent expenses for the administration of such Act for such year.]

LAWS INAPPLICABLE

SEC. 48. Nothing in sections 4283, 4284, 4285, 4286, or 4289 of the Revised Statutes, as amended, nor in section 18 of the Act entitled "An act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade and for other purposes," approved June 26, 1884, as amended, shall be held to limit the amount for which recovery may be had (1) in any suit at law or in the admiralty where an employer has failed to secure compensation as required by this Act, or (2) in any proceeding for compensation, any addition to compensation, or any civil penalty.

DISCRIMINATION AGAINST EMPLOYEES WHO BRING PROCEEDINGS

SEC. 49. It shall be unlawful for any employer or his duly authorized agent to discharge or in any other manner discriminate against an employee as to his employment because such employee has claimed or attempted to claim compensation from such employer, or because he has testified or is about to testify in a proceeding under this Act. *The discharge or refusal to employ a person who has been adjudicated to have filed a fraudulent claim for compensation is not a violation of this section.* Any employer who violates this section shall be liable to a penalty of not less than [$100] *$1.000* nor more than [$1,000] *$5.000*, as may be determined by the deputy commissioner. All such penalties shall be paid to the deputy commissioner for deposit in the special fund as described in section 44, and if not paid may be recovered in a civil action brought in the appropriate United States district court. Any employee so discriminated against shall be restored to his employment and shall be compensated by his employer for any loss of wages arising

out of such discrimination: Provided, That if such employee shall cease to be qualified to perform the duties of his employment, he shall not be entitled to such restoration and compensation. The employer alone and not his carrier shall be liable for such penalties and payments. Any provision in an insurance policy undertaking to relieve the employer from liability for such penalties and payments shall be void.

EFFECT OF UNCONSTITUTIONALITY

SEC. (50) If any part of this Act is adjudged unconstitutional by the courts, and such adjudication has the effect of invalidating any payment of compensation under this Act, the period intervening between the time the injury was sustained and the time of such adjudication shall not be computed as part of the time prescribed by law for the commencement of any action against the emplover in respect of such injury; but the amount of any compensation paid under this Act on account of such injury shall be deducted from the amount of damages awarded in such action in respect of such injury.

SEPARABILITY PROVISION

SEC. (51) If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and the applicability of such provision to other persons and circumstances shall not be affected thereby.

EFFECTIVE DATE

[SEC. (52) Sections 39 to 51, inclusive, shall become effective upon the passage of this Act, and the remainder of this Act shall become effective on July 1, 1927.]

SEC. 25. The provisions of this Act and the amendments made by this Act shall be effective for an injury, disability, or death which occurs or commences on or after the date of enactment of this Act, except that (1) there shall be no liability for deaths from causes other than the injury, as provided in sections 8(d)(3) and 9 of the Longshoremen's and Harbor Workers' Compensation Act, as amended by Public Law 92-576, for any such deaths occurring on or after the date of enactment of this Act and (2) the amendments made by section 14 of this Act relating to the modification of awards shall not apply to payments of compensation under the Black Lung Benefits Act (30 U.S.C. § 901 et seq.).

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